VIII-IX

REPRESENTATION AND SUFFRAGE IN MASSACHUSETTS, 1620-1691

JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE
HERBERT B. ADAMS, Editor

History is past Politics and Politics present History.—*Freeman*

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BY GEORGE H. HAYNES, Ph. D. (J. H. U.)

Professor of History, Worcester Polytechnic Institute

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CONTENTS.

CHAPTER I.

INTRODUCTION: PAGE.

The Patent from the Council for New England 7
The Royal Charter 7
Organization: Endicott at Salem 9
Transfer of the Charter 10

CHAPTER II.

BEGINNINGS OF REPRESENTATION IN MASSACHUSETTS:

Growth of the Assistants' Oligarchy 12
Religious Oligarchy: Church Membership a Condition of Citizenship 14
Reaction: The Watertown Protest 17
Representative Tax Commission 18
Preliminary Meeting of Deputies 19
General Court of 1634: A Representative Body 20
Reforms 21
Representation made Permanent 22
Origin of Representation in Massachusetts and in other Colonies, compared 22

CHAPTER III.

THE FIRST DECADE OF REPRESENTATIVE GOVERNMENT—1634-1644:

Conditions of Freedom made more strict 25
Admission and Powers of "Inhabitants" 26
Election Methods 29
The General Court 35
Apportionment of Deputies 35
Assertion of Privileges 38
Controversies between Deputies and Assistants 39
The Cambridge Congregation 39
"The Sow Business" 41
The General Court becomes bi-cameral 43

CHAPTER IV.

REPRESENTATION AND SUFFRAGE—1644–1688: PAGE.
Powers of the General Court 46
Deputies must be orthodox. Lawyers excluded 46
Assistants, Aristocratic and Conservative 47
The Religious Qualification 48
Petition of Dissenters 49
Admission of New Hampshire and Maine Settlements, 52
Liberalizing Tendency in the Church 54
Non-Freemen gain Local Franchise 55
The Restoration, and the Royal Commission 56
Nominal Abolition of the Religious Test—1664 57
Modifications of the Suffrage Qualifications 59
The Charter Cancelled 59
Dudley and the Council: Suppression of the Representative Assembly 61
Tyranny of Andros 61
Ipswich resists Arbitrary Taxation 62
Restriction of Town-Meetings 63
The Revolution of 1689 64

CHAPTER V.

REPRESENTATION AND SUFFRAGE IN PLYMOUTH—1620–1691:
Constitutional Basis of the Plymouth Government 66
Government by Primary Assembly 67
Representation: A Representative Code Commission . . . 68
Proxy Voting in the Court of Election 69
Representative General Court, 1638 70
Law of 1658 71
Admission and Powers of "Inhabitants" 71
"Freemen" vs. "Inhabitants" 74
Qualifications of a Freeman 76
No Formal Religious Test 77
Ratio of Freemen to Non-Freemen 79
Plymouth Elections 79
Massachusetts and Plymouth Representation, compared . . 80
Plymouth joined to Massachusetts 81

CHAPTER VI.

CHANGES INTRODUCED BY THE CHARTER OF 1691 82

Appendix A. Disfranchisement in Massachusetts 85
Appendix B. The Confederation of 1643 87

REPRESENTATION AND SUFFRAGE IN MASSACHUSETTS, 1620-1691.

CHAPTER I.

INTRODUCTION.

Toleration was not a seventeenth century virtue. Least of all could it find place in the Stuart system, based upon the divine right of kings. Dissenters soon learned that they were to look for as little favor from Charles I. as they had received from his father.

It was the conviction that there was now in England no hope for their cherished reforms that moved certain Puritan leaders to attempt in America the "raising of a bulwark against the kingdom of Antichrist." The first step toward that goal was the obtaining of a land-grant from the Council for New England. But this patent conveyed simply a full title to the land, together with undisputed privileges of trade. The patentees now stood on the same footing with a number of other private commercial companies. If to trade they wished to add schemes of colonization, they must secure a grant of governing power from the Crown.

As compared with the Separatists who founded Plymouth, the Puritans who were about to plant the colony of Massachusetts Bay enjoyed great advantages. They had not definitively broken from the established order; it was as Episcopalians that they came to America. Moreover, they were men of larger means and higher social standing than the Pilgrims, and throughout England they had friends of such influence that the King could not afford to be deaf to their petitions. In March, 1629, Charles I. signed the charter under which, through many vicissitudes, the new colony was

to be governed for more than half a century. By this instrument the six patentees, with the twenty new members whom they had associated with themselves, and "such others as should thereafter be admitted and made free of the Company," were constituted a body corporate and politic, by the name of the "Governor and Company of the Massachusetts Bay in New England." The management of this corporation was to be forever in the hands of a Governor, a Deputy Governor, and eighteen assistants, all of whom were to be chosen annually by and out of the freemen of the Company. Four General Courts, or assemblies of all the freemen, were to be held each year, while monthly, or oftener, the Governor and assistants might hold a court; at any of these, when the Governor and six assistants were present, they might admit freemen, administering to them, if they thought fit, the oaths of supremacy and allegiance. Subject only to the limitation that their enactments should not be repugnant to the laws of England, the freemen were empowered to pass all laws necessary for the government of the people living within their jurisdiction. The government which should be established by the Company was given "full and absolute power and authority to correct, punish, pardon, govern and rule," in accordance with its laws, all such subjects of England as should ever "inhabite" within the parts of New England granted to the Puritans.[1]

Such was the liberal charter which Puritan influence was still able to secure from Charles. "Omit the word 'Company,' and we have the constitution of an independent state, with very ill-defined powers."[2] But this charter was modeled very closely after those of other great companies incorporated for trade with America and India. Its language was conventional. According to all precedent, the body of the new corporation, remaining resident in England, would govern its plantations in the New World.

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[1] For the charter, see Records, Vol. I., p. 10.

[2] Lodge, English Colonies in America, p. 343.

The twenty-six men to whom the royal charter was granted were the original "freemen"; in the "freedom" of a trading company the germ of Massachusetts citizenship is to be found. Growth was provided for by the charter's giving the Governor, acting with at least six assistants, "full power and authority to choose, nominate and appoint such and so many others as they shall be willing to accept the same to be free of the said Company and Body, and them into the same to admit." Accordingly at the frequent courts new freemen were admitted. Nor was membership in the Company restricted to those who might enter it as a business venture; the two ministers who were called in to open the sessions with prayer were made "free of the Company."

Organization under the new charter was speedily effected. At a General Court held in London, April 30, 1629, there was instituted what was to be called the "Governor and Council of London's Plantation in the Massachusetts Bay."[1] By erection of hands, John Endicott was elected Governor. He was already on the ground. Hardly had the original land-grant been obtained when this rigid Puritan was dispatched with some fifty colonists to secure by occupation the Company's foothold upon its newly acquired territory. He succeeded in establishing friendly relations with the stragglers from previous settlements still clinging to Naumkeag (Salem), and made that little village the center of the new plantation. In the choice of Endicott's Council the general body of the freemen at Salem were given no voice. Seven members, three of them being ministers, were appointed by the Company. The Governor, together with these, was to select three more members from among the emigrants, while, as a mark of special conciliation, the "old planters" who had been settled at Salem before Endicott's arrival were to be allowed to select the two remaining councillors.[2] Thus far, it is to be noted, the steps taken were in

[1] Records, Vol. I., p. 361.

[2] Not *three*, as stated by Doyle, English Colonies in America, Vol. II., p. 118.

perfect accord with the charter. "The sole managing and ordering of the government and of the affairs of the plantation" was, it is true, placed in the hands of a Governor and Council of twelve, resident in the colony, but in strict subordination to the Company in London.

Yet though the appointing power was so largely exercised by the Company, the Governor and Council, placed in power in the colony, were expressly "settled and established as an absolute government," and no prohibition was placed upon the colonists' electing their own officers and making their own laws in the future. Whether intentionally or not, the omission of such a prohibition left free scope for the important change which was soon to follow. During the summer, certain persons "of figure and estate" in England proposed to settle in the new colony, provided they might be allowed to take the charter with them and exercise its corporate powers in Massachusetts. This proposal was debated at the General Court held July 28, 1629.[1] After private consideration, and debate in the court held the next month, "by erection of hands it appeared by the general consent of the Company, that the government and patent should be settled in New England."[2] In accordance with this vote an arrangement was made by which the members of the Company who remained in England were to share for a certain number of years in the trading profits of the Company; but all powers of government were handed over to those who should become residents of the colony.[3] Under the new conditions it became necessary to have officers who would become leaders of the emigrants. Accordingly Cradock, the Governor elected on the nomination of the King in the charter, resigned and in his place was chosen John Winthrop. From this time few traces of the original trading company are to

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[1] Records, Vol. I., p. 49. [2] *Ibid.*, p. 51.

[3] The legality of this transfer is discussed at length in Barry, Vol. I., pp. 175-6, and Washburn's Judicial History of Mass., pp. 13-14.

be found. The obtaining of a charter under that form was merely a step toward a definite goal. The Puritans came not as trading adventurers. Comparing themselves with most other colonists of that period it was with simple truth that they declared: "Those planters go and come chiefly for matter of profit; but we came to abide here, and to plant the gospel, and people the country, and herein God hath marvellously blessed us."[1]

[1] 1646, Winthrop, Vol. II., p. 367.

CHAPTER II.

The Beginnings of Representation in Massachusetts.

The history of the colony of Massachusetts Bay during the first five years of its existence presents a record of phenomenal constitutional development—of development, however, by sharp action and reaction, rather than by steady progress toward a fixed goal. In 1629 the status of the colony was that of the weak trading post of a commercial company resident in London. Until the transfer of the charter the colony was ruled by a Governor and Council in whose election the resident freemen had had practically no voice. In 1634 the colony, embracing sixteen scattered plantations, was well advanced in an organization very like that of an independent State. Its connection with London partners was practically obsolete. Its charter was carefully preserved, but it was regarded as little else than a weapon of defense, to be produced in time of emergency; in the ordinary conduct of government its existence was ignored. The colony had its own Governor, its magistrates, and its representative legislature, all chosen by the body of the freemen.

On the nineteenth of October, 1630, there assembled in Boston the first General Court in the new colony. It was in no sense a representative body, but a gathering at which all those, and only those, who were "free of the corporation" were expected to be present; and as yet no freemen had been admitted since the transfer of the charter.[1] As established by the charter, the government of the Company was purely democratic. The election of officers and the making of laws were to be "by the freemen." But at this very first

[1] Hutchinson, Vol. I., p. 25.

General Court, steps were taken which tended strongly toward an oligarchic government The Assembly was much under the influence of the recently arrived Governor and his assistants, and Winthrop, as is repeatedly evident, profoundly distrusted democracy. The amount of power which the freemen here put out of their own hands is astonishing. They retained the power of choosing assistants, "when there are to be chosen," but "by the general vote of the people and erection of hands," assent was given to the proposition that the assistants should choose from their own number the Governor, and Deputy Governor, who with the assistants should have the power of making laws and choosing officers to execute the same."[1] Six months later a step was taken the natural effect of which must have been to still further narrow the oligarchy to which the conduct of the government was committed.[2] According to the charter, it was necessary in order that a court might be legal, that at least seven assistants should be present. In view of the fact that the number of assistants was small and that some of them were about to leave the colony, it was now voted that "whensoever the number of assistants resident within the limits of the jurisdiction should be fewer than nine, it should be lawful for the major part of them to keep a Court, and whatsoever orders or act they made should be as legal and authentical as if there were the full number of

[1] Records, Vol. I., p. 79. Hutchinson notes this as a departure from their charter. Vol. I., p. 25. The extreme conservatism of this law is only apparent upon noticing how the assistants were elected. The colonial officers, from Governor down, were chosen by show of hands upon oral nomination. Rotation in office was not then a ruling principle in politics, and in the case of the assistants a binding custom, soon embodied in law, required that the name of each assistant of the preceding year should in turn be put in nomination and either accepted or rejected by the majority vote of all the freemen present, before any new candidate could be voted upon. The inevitable result was practical life-tenure for the assistants.

[2] Mar., 1631. Records, Vol. I., p. 84.

seven or more."[1] In other words, it was made possible for five men, or even less, not only to make but to direct the execution of colonial laws. One further step must needs be taken in the direction of oligarchy before the reaction was to set in. At the May Assembly it was enacted that as often as once a year a General Court should be held, at which it should be "lawful for the commons to propound any person or persons whom they desired to be chosen assistants. The like course to be holden when they, the said commons, should see cause for any defect or misbehaviour to remove any one or more of the assistants."[2] The right of regular annual election of assistants by the freemen had already been much impaired, but this obscurely worded act seems to go still further and substitute for the right of election the mere privilege of unauthoritative nomination or protest.[3]

It is to be noted that while this centering of power in the hands of the assistants was approaching its height, another oligarchic tendency took its rise which was to be far more enduring. Three years sufficed to replace the purely political oligarchy by a well-developed representative government. But an oligarchy resting upon a religious test was to continue practically without relaxation for almost three-score years. The franchise of the Company had heretofore been bestowed freely upon candidates in England and upon the "Old Planters" at Salem with no suggestion of a religious qualification.[4] At the first General Court held after the transfer of the charter, freedom was conferred upon one hundred and

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[1] 1631. Though the charter allowed the election of eighteen assistants, it was very seldom that more than half of that number were chosen, "the vacancies being kept for men of rank who were expected to come over." Palfrey, Vol. I., p. 383.

[2] Records, Vol. I., p. 87.

[3] Washburn (Judicial History of Massachusetts, p. 15), and Savage (Winthrop, Vol. I., p. 85, note) apparently see in this act no encroachment upon the rights of the freemen. Palfrey (Compendious History of New England, Vol. I., p. 123), and Doyle (Vol. I., p. 139) hold the contrary view.

[4] Records, Vol. I., p. 387.

nine applicants, among whom were many men of prominence "who were not of the churches."[1] Not until this court of 1631 was it enacted that "to the end the body of the commons may be preserved of honest and good men . . no man shall be admitted to the freedom of this body politic but such as are members of some of the churches within the limits of the same."[2] Winthrop did not deem the passage of this law of enough importance to deserve his mention, yet no statute of the colony's first half-century struck so severe a blow at popular government, and none has brought upon the fathers of the colony so much reproach. It seems unwarranted to say that this law "actually disfranchised some who had hitherto enjoyed the rights of citizenship."[3] But from this time on citizenship was made an incident of church membership. A small minority here decreed that for time to come the government should continue in the hands of a small minority. A law so foreign to the spirit of our times can only be judged fairly when viewed from the standpoint of the age that gave it birth. The ideal which it

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[1] Hutchinson, Vol. I., p. 25. Prince, Annals, pp. 320 and 355, states, and the Records do not disprove, that these 109 simply gave notice at this court of their wish to take up their freedom, and that they were admitted at the next.

[2] Records, Vol. I., p. 87. Plymouth required no formal religious test of her freemen. In Connecticut all were freemen who were admitted by the majority of any township and took the oath of fidelity to the colony. In the Governor alone was church membership required. (Hollister's History of Connecticut, pp. 84-5.) In New Haven the two things insisted on by Davenport were that church membership must be a necessary qualification for citizenship, and that the Scriptures furnished a sufficient guide for the government of the body politic. (Doyle, Vol. I., p. 259.) Rhode Island's constitution of 1647 declared: "All men may walk as their conscience persuades them." (Doyle, I., 363.) "Massachusetts began with a very narrow policy. Only church members were allowed to vote." This statement of the late Dr. P. E. Lauer (Church and State in New England, p. 57) overlooks the fact that at the beginning of Massachusetts history, more than two years passed during which some two hundred freemen were admitted without the application of any religious test.

[3] Doyle, Vol. I., p. 259.

sought to realize must command the admiration of all. It aimed to establish a genuine *aristocracy*, a rule of the best. "Not birth, nor wealth, nor learning, nor skill in war was to confer the power, but personal character, goodness of the highest type."[1] That their conception of "the good life" was painfully narrow, that their test of character was utterly inadequate, cannot be denied. But these Puritans sincerely believed that only by restricting citizenship to Christian men in fellowship with their churches could they secure for the future loyalty to the common objects for which they had ventured and sacrificed so much. Hoping by the most unreliable of tests, subscription to a creed, to plight the allegiance of the future to the purposes of the past, they did not hesitate to adopt a course which must inevitably exclude three-fourths of their fellow-colonists from all share in the government, must secularize religion and ecclesiasticize politics, must excite perpetual friction, if not revolt, at home, while constantly inviting interference from abroad.[2]

Thus in a single year the powers of electing the chief officers, of law-making and law-executing, were transferred from the freemen to the assistants; the number requisite for the exercise of these extensive powers was reduced from seven to five or even less, and apparently all that the freemen could do to affect the make-up of this all-powerful court of assistants was to "propound whom they desired to be chosen," or to remove an assistant in case of misdemeanor. And now, narrow ecclesiasticism had joined hands with political oligarchy. It was high time for a reaction in favor

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[1] Palfrey, History of New England, Vol. I., p. 345.

[2] As to the secularizing effect upon religion, Edward Randolph, writing half a century later, says: "It is nothing but interest and design that draws most of the people into their church-membership and to think well of that religion and government they thrive under." (Hutchinson Collection, p. 484.)

Though non-church-members were excluded from the franchise, "every inhabitant in any town was liable to contribute to all charges, both in church and commonwealth, whereof he doth or may receive benefit." (Records, Vol. I., pp. 216-17 and 240.)

of popular government, and at the following Court of Election it came.

"True to English precedent, Massachusetts found the salvation of her constitutional liberties in a question of taxation."[1] Even after Boston had been determined upon as the center of government, the building of a pallisadoe for Cambridge, at public expense, was still persisted in as a defense of the frontier against the Indians.[2] To meet the cost of this fortification, by order of the Governor and assistants a rate was levied upon all the plantations.

Upon the arrival of the warrant levying £8 upon the inhabitants of Watertown, the minister and elder assembled the people of that little Puritan village, and, in words which breathed the spirit of Magna Charta and the recent Petition of Right, "delivered their opinions, that it was not safe to pay moneys after that sort, for fear of bringing themselves and posterity into bondage."[3] At the next court these sturdy protestants were summoned before the Governor and assistants to answer for their recusancy. In this interview, instead of attacking the power exercised by the assistants on the ground that that body had ceased to be properly elected, they urged the less tenable objection that "this government was no other but as of a mayor and aldermen, who have no power to make laws or raise taxations without the people."[4] To this ill-directed attack Winthrop adroitly replied by

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[1] Doyle, Vol. I., p. 139.

[2] When this tax was voted (Feb. 3, 1632, Records, Vol. I., p. 93) it was the intention to make Cambridge ("the newe towne") the capital.

[3] Winthrop, Vol. I., p. 84. It seems clear that this protest was made purely as a matter of principle. Watertown had no less interest than the other towns in the protection of the frontier. Nor was it the apportionment of the burden which gave offense. In a preceding, as in the subsequent assessment, Watertown contributed without protest the same amount as Boston. (Winthrop, Vol. I., pp. 84 and 86, note.)

[4] *Ibid.* Doyle, Vol. I., p. 139, calls attention to the fact that in denying the validity of representation this contention really struck a blow at those popular rights which it aimed to defend.

explaining that "this government was rather in the nature of a parliament, and that no assistants could be chosen but by the freemen, who had power likewise to remove the assistants and put in others." In dialectics the men of Watertown were worsted. Says Winthrop: "they were fully satisfied; and so their submission was accepted and their offense pardoned."

But their protest had been made. Nor was it lost. The freemen were at last thoroughly aroused. An oligarchic spirit had been steadily growing which was all the more dangerous from the very fact that the conspicuous merit of the leaders bade fair to disguise their gradual usurpation of power. But at last the freemen saw their danger. Aristocracy might survive in Massachusetts, but the oligarchic power of the assistants had reached its zenith and must rapidly decline. The freemen were now in mood to assert their rights and govern themselves. Within less than two months an act was passed formally defining the Governor's powers.[1] At the next Court of Election the freemen voted that "the Governor and assistants should all be new chosen every year by the General Court," thus in form, at least, abolishing the practically life tenure of the assistants.[2] More important still—for in it lay the germ of representative government—was the enactment that every town should choose two men "to advise with the Governor and assistants about the raising of a public stock, so as what they should agree upon should bind all," etc.[3] Taxation was no longer to be determined by half a dozen of the wealthy "gentry." The people, through their town representatives, would now tax themselves.

Short as may seem the step from this representative tax commission to a representative General Court, comprising both deputies and assistants, the change which it involved in

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[1] April 3, 1632. Winthrop, Vol. I., p. 86.

[2] May 9, 1632. Winthrop, Vol. I., p. 90.

[3] Winthrop, Vol. I., p. 91. Records, Vol. I., p. 93.

the form of government was momentous. That no clerk, no historian, no diarist of that period betrays any surprise or unusual interest in this transformation clearly illustrates the faulty perspective often found in early colonial histories. Events which brought in their train a veritable revolution are hurried over with a mere passing notice.

So far as constitutional development is concerned, the record of the year 1633 is a blank. But the leaven of freer political thought was working, though in silence. Six weeks before the meeting of the General Court in May, 1634, notice having been sent out of the approaching Assembly, "the freemen deputed two of each town to meet and consider of such matters as they were to take in order at the same General Court."[1] This action was entirely without precedent. Who issued this formal notice of the approaching Assembly? By whose authority were the towns ordered to send deputies? Or did the towns await no summons, but of their own accord concert to send representatives? These are questions of the keenest interest, but which no historian of the time thought it worth while to answer.[2] Upon assembling, these deputies of the freemen "desired a sight of the patent," and finding that according to its provisions all their laws should be made at the General Court, they proceeded to take counsel with the Governor. If, as some have supposed, these deputies were present by the invitation of the Governor and assistants, it is very evident that Winthrop and his associates were prepared to make but slight concessions to them. The

[1] 1634. Winthrop, Vol. I., pp. 152-4. Savage, in his note on this passage, thinks *three* should be substituted for *two* in Winthrop's text. At the court which follows there were evidently three delegates present from each of eight towns.

[2] The same careful editor (Winthrop, Vol. I., p. 153) conjectures that this summons was sent out by the assistants, who were becoming weary of the exercise of all the powers of government and wished others to participate in the responsibility. The aggressive mood manifested by the deputies from the very first, however, would seem to argue against their having met by invitation of the assistants.

Governor expounded to them the state of affairs about as follows: When the charter was granted, the number of the freemen was not greater than could conveniently meet and pass the laws. But now the freemen had so multiplied that the making and executing of laws must be effected by some form of delegation. Although "a select body to intend that work" would be necessary in the future, they were not as yet "furnished with a sufficient number of men qualified for such a business, neither could the commonwealth bear the loss of time of so many as must intend it." His suggestion for the present, therefore, was that the General Court should authorize the annual appointment, upon summons of the Governor, of a committee who should examine the laws and declare their grievances to the assistants; the consent of this committee should also be obtained to all tax assessments and disposals of public land.[1]

But the freemen were not to be put off with any such indirect participation in making their own laws. At the General Court which followed there appeared—without any previous summons, so far as records show—three deputies for each of eight towns.[2] It was the regular Court of Election, but more important matters than office-filling had brought these representatives together. First of all a new freeman's oath was formulated.[3] From this time forward, each candidate for freedom swore allegiance not to the Crown but to the colony. He pledged himself to the most implicit obedience to its laws, to the maintenance of its liberties, and to the conscientious performance of his duties as a citizen. The next step was to affirm in the strongest terms that none but the

[1] Winthrop, Vol. I., p. 153.

[2] There were now sixteen plantations in the colony. The smaller and more distant settlements seem to have sent no deputies.

[3] Records, Vol. I., pp. 117 and 354. For the first freeman's oath see Records, Vol. I., p. 353. In 1665 the Court, yielding to the pressure of the Royal Commission, prefixed to the freeman's oath an oath of allegiance to the Crown.

General Court had power to admit freemen;[1] to elect, appoint or remove colonial officers, civil and military, or to define their duties and powers; or to raise money and dispose of lands. After this declaration of rights, the freemen were ready to proceed to the election of officers. For the first time in the history of the colony, Winthrop was passed over in the choice of Governor.[2] His aristocratic proposition that the freemen's share in law-making be confined to the mere declaration of grievances was still fresh in their minds.

Having renewed their charter rights and laid claim to yet larger powers, having supplanted the Governor, and rebuked the assistants by the imposition of certain fines on account of their arbitrary acts, it now remained for the freemen to establish the representative legislature upon a permanent basis. It was enacted that four General Courts should be held annually, to be summoned by the Governor, and not to be dissolved without the consent of the majority of the members. In the Court of Election every freeman was to "gyve his owne voyce." As regarded the other three courts, it was ordered that "it shall be lawful for the freemen of every plantation to choose two or three of each town before every General Court, to confer and prepare such public business as by them shall be thought fit to consider of at the next General Court, and that such persons as shall be hereafter so deputed by the freemen of the several plantations to deal in their behalf in the public affairs of the commonwealth, shall have the full power and voices of all the said freemen derived to them for the making and establishing of laws, granting of lands, etc., and to deal in all other affairs of the

[1] According to the charter, the Governor with six assistants might admit freemen.

[2] At this court the written ballot was first used in Massachusetts political elections, the object of its introduction at this time having been, as is generally supposed, to conceal the opposition to Winthrop. In the margin of Winthrop's History (Vol. I., p. 157), opposite the notice of Dudley's election, is written "Chosen by papers."

commonwealth wherein the freemen have to do, the matter of election of magistrates and other officers only excepted."[1]

Although "all things were carried very peaceably," the changes which were accomplished during those three memorable days may truly be called revolutionary.[2] "The trading corporation had become a representative democracy."[3] The freemen asserted their right to a far greater share in the government than they had hitherto enjoyed, and settled the legislative body upon a representative basis, which, with modifications of only minor importance, was to continue as long as the charter government. Indeed it is not too much to say that the two and one-half centuries which have since elapsed have not wrought such radical and beneficent changes in the government of Massachusetts as did that short session of the General Court in the year 1634.

Massachusetts was the second colony to make trial of representative government.[4] In Virginia a house of burgesses, the first representative body convened in America, had been assembled fifteen years earlier.[5] The other colonies for the most part arrived at representation only slowly and after a variety of expedients and compromises.[6] At first market government was the most simple and natural form. The

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[1] Records, Vol. I., pp. 118 to 120.

[2] Winthrop, Vol. I., p. 158.

[3] Bancroft, Vol. I., p. 246.

[4] Plymouth did not find representation necessary until 1638. See *infra*, cp. V., p. 70. In Connecticut a system of representation modeled on that of Massachusetts was adopted in the constitution of 1638.

[5] June, 1619. "Only in Virginia had the colony the needful materials for a representative assembly at the time when it first acquired the right of self-government." Doyle, Vol. I., p. 138.

[6] An excellent summary of the steps by which representative government was reached in each of the colonies is to be found in Frothingham's "Rise of the Republic," p. 18, note. See also "History of Elections in the American Colonies" (1893), by Cortlandt T. Bishop,—an excellent monograph, to which reference has been impossible, as it came to hand only after the present study was in type.

freemen could easily assemble and in folkmoot transact what little business they did not choose to entrust to the Governor and magistrates. But the growth of Massachusetts had been exceptionally rapid. In this its sixth year the colony numbered between three and four thousand inhabitants, dwelling in not less than sixteen towns, the most remote of which was thirty miles from Boston.[1] For all the freemen from so wide a circle of towns to assemble at one time in Boston was clearly impracticable. The frontier would have been exposed to Indian attack. Even had it been possible, such a folkmoot would have been a most unwieldy and inefficient body for law-making.[2]

The Puritan colony outgrew the rule of Governor and assistants much more rapidly than its Pilgrim neighbor. This was largely due to the greater rapidity with which its population increased and spread into scattered settlements. Nor could Massachusetts satisfy her needs by the election of more assistants, for the charter restriction of that court to eighteen removed all elasticity by which it might otherwise have been developed into an adequate representative body.[3] It should not be overlooked, also, that in Massachusetts class lines were much more sharply drawn than at Plymouth. There were the "gentry" as distinguished from the "generality," and it was for the "gentry" that the assistants' positions were invariably reserved. From the pulpit the doctrine was preached that the assistant's right to his office was as inviolable as that of the private citizen to his freehold.[4]

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[1] Palfrey, Compendious History of N. Eng., Vol. I., pp. 148-9. The colony had at this time between three and four hundred electors. Bancroft, Vol. I., p. 246.

[2] In a realization of this fact and in an appreciation of the ability of the natural leaders of the colony lies, doubtless, the explanation of the readiness with which legislative power was at first suffered to pass into the hands of the assistants.

[3] How the board of assistants was still further limited has been seen, *supra* p. 13 and note.

[4] This was the idea expressed in the Rev. John Cotton's sermon. Winthrop, Vol. I., p. 157 and p. 168.

The action of the freemen in 1634, in providing for the election of deputies to represent them in the General Court, was really, therefore, laying the foundation for a "Lower House." By the new arrangement the freemen were in a sense given double representation, the assistants standing for the colony as a whole, while in the deputies the special interests of town constituencies found expression.

Although the representative body was now in working order, many a question of how its efficiency might be promoted remained unsettled. There was as yet no thought of apportioning deputies according to the population of the towns.[1] Unlike the practice in our modern legislatures, residence within their constituencies was not required of the deputies.[2] For ten years both deputies and assistants sat together in one House, over which the Governor presided. As might have been anticipated, from the beginning, their respective rights and privileges proved a fruitful source of discord.

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[1] See *supra* p. 21. According to this law each plantation might send "two or three." Three seems to have been the number uniformly sent by the older towns. For many years the deputies were not entered by townships upon the records. Mr. Savage's note (Winthrop, Vol. I., p. 154) contains interesting information concerning the first deputies.

[2] For fifty years it was quite the custom for distant towns to choose as their deputies gentlemen living nearer the center of government. Thus Oxford (History of Oxford, p. 12) in 1693 chose as its first representative to the General Court, Daniel Allen, of Boston. Local residence was first required in 1694. Thus in 1653 Mr. Atherton, the Speaker of the House, was deputy for Springfield, though a resident of Dorchester. In 1671, Speaker Savage represented Andover, though living in Boston.

CHAPTER III.

The First Decade of Representative Government.

The first decade of representative government in Massachusetts witnessed not only the gradual development of this newly instituted legislature, but also a more exact determination of the basis upon which representation was to rest. The law already required that all candidates for freedom be members of some of the churches within the colony.[1] But this restriction proved altogether too elastic. To the dismay of the orthodox Puritans it was soon found that by the organization of churches to suit almost every phase of belief the object of their religious test might be defeated. Accordingly, by a law of March, 1636, companies of men who were planning "to join in any pretended way of church fellowship," were required first to secure for their proposed foundation the approval of the magistrates and of the elders of the greater part of the churches. No members of churches formed without this joint secular and ecclesiastical approval were to be admitted to the freedom of the commonwealth.[2] Doubts as to what should constitute the proper basis for church-membership were presently removed by the enlightening labors of the synod of divines which met at Cambridge in August, 1637. "Nine unwholesome expressions and about eighty opinions, some blasphemous, others erroneous, and all unsafe, were condemned by the whole assembly."[3] "Henceforth," says Doyle, "orthodoxy in eighty-nine different articles was to be the needful condition of citizenship in Massachusetts."[4]

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[1] See *supra* p. 15.

[2] Winthrop, Vol. I., p. 284.

[3] Records, Vol. I., p. 168.

[4] Vol. I., p. 179.

The religious test for freemanship was not the first defense against "the world" which these shrewd Puritan leaders erected. The full and absolute control which the charter granted them over their territory they considered gave them the right to exclude all whom they thought undesirable settlers. "If we here be a corporation, established by free consent, if the place of our co-habitation be our own, then no man hath right to come in to us without our consent." This theory speedily found expression in law. At the second court of assistants held at Charlestown, Sept. 7, 1630, it was ordered that no person should plant in any place within the limits of the colony without leave from the Governor and the majority of the assistants.[1]

The various plantations were not slow in erecting each its own ring-fence of restrictions.[2] Business shrewdness no less than religious exclusiveness dictated these regulations.[3]

Early in 1634 another step was taken in the direction of ensuring the allegiance of non-freemen to the colonial government by the formulation of the "resident's oath," pledging loyalty and obedience to all the colony's laws. This was to be taken by all men over twenty years of age who should have been resident six months within the colony. A man refusing to take this oath was to be bound over to the next court, and upon a second refusal he might be banished.[4]

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[1] Records, Vol. I., p. 76.

[2] The vexed question of the origin of the Massachusetts town is ably discussed in "The Genesis of the Massachusetts Town." (Proceedings of Mass. Hist. Soc., Jan., 1892.)

[3] *E. g.* "Agreed, by the consent of the freemen (in consideration there be too many inhabitants in the Town, and the Town thereby in danger to be ruinated) that no foreigner coming into Town, or any family arising among ourselves, shall have any benefit either of commonage or Land undivided but what they shall purchase, except that they buy a man's right wholly in the Town." (History and Genealogy of Watertown, p. 995.) A previous record in the same town had provided that "no foreigner....of England or some other plantation, shall have liberty to set down amongst us, unless he first have the consent of the freemen of the Town." (*Ib.*, 1634-5.)

[4] Records, Vol. I., p. 115.

For the first few years the matter of admission of inhabitants seems to have been left largely in the hands of the towns, subject to the general law of 1630 and to the taking of the resident's oath. A satisfactory watchfulness was ensured, as only freemen were allowed to vote on the receiving of inhabitants.[1] But as the settlements rapidly spread, the uniformity considered desirable in the standard of inhabitants became harder to maintain. Divers heresies, both political and theological, seemed threatening the very life of the little commonwealth. Boston gave an example, soon to be widely followed, when in her town-meeting it was agreed that no further allotments should be made to any newcomers, "but such as may be likely to be received members of the congregation."[2] The next year the General Court felt it necessary to ensure uniformity in this regard throughout the jurisdiction by the passage of a general law.[3] This was the famous "Alien Law of 1637," providing that: "No town or person shall receive any stranger resorting hither with intent to reside in this jurisdiction, nor shall allow any lot or habitation to any or entertain any such above three weeks except such person shall have allowance under the hands of some one of the Council or of two other magistrates."[4] Henceforward for the regulation of the admission of inhabitants, reliance was to be placed not on the spirit of self-protection in each community, but on rigid colonial law, enforced by heavy fines against any offending person or town.[5]

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[1] 1636, Records, Vol. I., p. 161.

[2] II. Rec. Com. Report. Boston Records 1634-1660, p. 5, Nov. 30, 1635.

[3] Though perfectly general in its provisions, this law had a special object clearly in view at the time of its passage. Among the passengers upon a ship soon to arrive were many friends of Wheelwright, well disposed toward the Antinomian heresy. It was for their reception that this cordial welcome was prepared. (Winthrop, Vol. I., p. 267.)

[4] Records, Vol. I., p. 196; Vol. II., p. 141. C. F. Adams, "Three Episodes in Massachusetts History," p. 459.

[5] The penalties were £100 for the offending town; £40 for the offending person. This law became the basis for much curious town

This much-vexed term, "inhabitant," seems to have included all male adults, not admitted freemen of the colony, on the one hand, nor servants, on the other, who by general laws or by special town acts were allowed to become permanent residents of the town.[1] The word was used with great indefiniteness; a "general meeting of the inhabitants" is the common expression applied to a town-meeting, in which as yet the freemen were the chief actors. The "inhabitant" was not necessarily a freeholder, *i. e.* "one who by purchase or inheritance had secured a right to a share in the common and undivided lands" of the town.[2] Again, the freeholder might or might not be a freeman; that depended not upon his owning land, but upon his being a church-member and taking the freeman's oath.

The narrowness of the Massachusetts colonial franchise

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legislation. Thus, "for the better preserving of religion and ourselves from the infection of error," the pious freemen of Lancaster covenanted "not to distribute allotments and to receive into the plantation as inhabitants any excommunicate or otherwise profane and scandalous (known so to be) nor any notoriously erring against the doctrine and discipline of the churches and the State and Government of this Commonweale." Lancaster Records, p. 28. In Groton, June 2, 1669, "the towne did solemlie determine to take in no more but a taylear and a smith," and upon further consideration it was the town's mind that "onely a smith and no other" should receive a grant from the town. (Early Records of Groton, p. 25. See also pp. 39, 57, 60 and 100.) "William Douglas is allowed to be a townsman, he behaving himself as becometh a Christian man." (Boston Records, 1634-1660, p. 55.) In Charlestown, 1636, Ralph Smith was "admitted a month on trial." (History of Charlestown, pp. 53-56.)

[1] This is practically the definition of "inhabitant" given by the Hon. Mellen Chamberlain. (The Genesis of the Massachusetts Town, p. 72.)

[2] George Wingate Chase, "History of Haverhill," p. 115. At a Boston town-meeting, May 18, 1646, it was voted by the freemen that all whom the townsmen had admitted to be inhabitants should have equal right of commonage, but that those who should thereafter be admitted inhabitants should have no right of commonage unless they hire it. II. Rec. Com. Report, p. 88. See also an Abstract of Laws of New England, first printed in 1755, Hutchinson Collection, p. 165.

is proverbial. Her freemen stubbornly resisted taxation without representation as applied to themselves, and then proceeded to impose taxes upon the unenfranchised while giving them neither part nor lot in the choice of their law-makers, a selfish inconsistency which the Plymouth freemen recognized and avoided from the first.[1] Yet it must not be thought that the unfree, though entirely excluded from the colonial franchise, had no direct means of making their needs and opinions known. Surely as early as 1641 it was provided by law that: "every man, whether inhabitant or foreigner, free or not free, shall have liberty to come to any court, council or town-meeting, and either by speech or writing to move any lawful, seasonable and material question or to present any necessary motion, complaint, petition, bill or information whereof that meeting hath proper cognizance, so it be done in convenient time, due order and respective manner."[2]

The ten years following the first choosing of deputies in Massachusetts witnessed a number of changes in election methods which demand brief mention, since by improvement in the election machinery the genuineness of representative government was ensured and its efficiency promoted.

As we have seen, an innovation was made in the primitive mode of electing colonial officers by erection of hands, or, in doubtful cases, by "polling the house," when in 1634 the written ballot was first applied to the election of Governor.[3] A year's trial of this new device proved so satisfactory, and the free choice of deputies was immediately seen to be of so great importance, that in 1635 it was enacted that in future deputies should be elected "by papers, as the Governor is chosen."[4] From this time the election of deputies by ballot

[1] See *supra*, p. 16, note, also Plymouth law of 1638, *infra*, p. 70.

[2] "Body of Liberties," Mass. Hist. Soc. Coll., XXVIII., p. 218.

[3] See *supra*, p. 21, note. Records, Vol. I., p. 87.

[4] Records, Vol. I., p. 157.

was left to the several towns, the General Court merely determining the qualifications for service, providing general regulations to ensure the accuracy of returns, and prescribing penalties for illegal voting.

Up to this time at the Court of Election every freeman in the colony was expected to present himself at the place of assembly in Boston and take part in the choice of colonial officers. But as settlements spread, the assembling of all the freemen at once in the capital town left the frontier exposed to Indian attack. In the spring of 1636, therefore, at the time of the approaching election, the six frontier towns were "given liberty to stay so many of their freemen at home for the safety of their town as they judge needful, and that the said freemen that are appointed by their town to stay at home shall have liberty for this Court to send their voices by proxy."[1] In the following year a law was passed making it lawful for all freemen in future to send their votes by proxy to the Court of Elections.[2] This law did more than obviate the danger of Indian attacks upon remote towns; it secured to them their proportional influence in the government. Without some such law, the freemen whom in increasing numbers necessity would detain at home, would have lost their votes entirely, and the franchises of the freemen living in and about Boston would have determined each election.

Throughout the first half-century of the colony's history the General Court was continually pottering with the question of how the assistants should be chosen. During the first decade the General Court seems to have nominated them, each name being presented separately for the vote of the whole assembly.[3] In 1640 a step was taken toward giv-

[1] Records, Vol. I., p. 166. [2] *Ibid.*, p. 188.

[3] Thus, in 1635, Winthrop describes the election: "The Governor and Deputies were elected by papers, wherein their names were written; but the Assistants were chosen by papers without names, viz: the Governor propounded one to the people, then all went out and came in at one door, and every man delivered a paper into a hat, such as gave their vote for the party named gave in a paper with some figures or scroll in it, others gave in a blank." Vol. I., p. 190. See also Thos. Lechford's "Plain Dealing," pp. 60-61.

ing the people a more direct voice in the nomination of assistants. The new law provided that at the town-meeting in which the deputies were elected, the freemen should express their choice in the nomination of magistrates to be chosen at the approaching Court of Election. These preliminary lists of candidates, with the number of votes supporting each, were brought to the General Court, where they were compared and a new list of the required number of candidates made up from the names which had received most votes,

This official "slate" was referred back to the towns; upon each of these names, until the desired number had been chosen, the freemen voted at the Court of Election, either in person or by proxy.[1] A plan for nominating by special conventions of delegates was put in operation by the law of 1642, which provided that each town should choose one or two of its freemen who should meet for the definite purpose of nominating magistrates. No name that did not appear upon this official list was to be put to vote at the Court of Election.[2] The next year, however, this convention system was given up and the old method of preliminary nomination

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[1] Records, Vol. I., p. 293. The next year the General Court referred to the freemen a proposal by which in each town the freemen should vote for electors, ten votes being enough to elect one, who should "be sent to the Court with power to make election for all." (Records, Vol. I., p. 333.) Referring to this, Mr. Doyle (Vol. I., p. 338) says that "in 1641 the preliminary election was altered," overlooking the fact that this is the record not of a law but simply of a proposal which the deputies were to refer to the freemen "and make returns at the next Court, what the minds of the freemen are herein, that the Court may proceed accordingly." As no further action was taken at the next session, it seems clear that this proposal never became law. Mr. Doyle says that the powers of the electors here proposed "did not extend to final election." But the preamble of the act makes it evident that its purpose was to do away with proxy voting, and with the necessity of the freemen's going to Boston to attend the court. It would seem therefore, that "with power to make election for all the rest" meant "powers of final election."

[2] Records, Vol. II., p. 2.

in town-meetings as put in practice by the law of 1640 was revived, with the explanation that all the freemen should have equal liberty with the deputies in nominating candidates.[1]

Though the privilege of oral nomination was freely open to all voters, it demanded too great publicity to give satisfaction. By a law of 1644 this difficulty was obviated. At town meetings held several months in advance of the election every freeman in the colony was given "liberty to put in his vote for whom he thinketh fit" in the nomination of candidates for the magistracy. By an elaborate process these town votes, in sealed packages, were collected in the shire towns and finally sent to Boston, when with due ceremony the votes were counted and the seven names receiving the highest number were reported back to the towns; in the ensuing election each freeman "sent in his proxy" for or against each of these candidates and no others.[2]

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[1] Records, Vol. II., p. 37. Later in the same summer an order was passed that "for the yearly choosing of assistants for time to come, instead of papers the freemen shall use Indian beans, the white beans to manifest election, the black for blanks." (Records, Vol. II., p. 42.) "Putting in more than one paper or beane for the choyce of any officer" was punishable by a fine of £10. (Records, Vol. II., p. 48.) In 1647, the fine of Mighill Smith for "putting in three beans at once for one man's election" was remitted, "it being done in simplicity, and he being poor and of a harmless disposition." (Records, Vol. II., p. 179, see also Vol. IV., Pt. II., p. 100.)

[2] Records, Vol. II., p. 87. p. 175 and p. 210. With changes of minor details this law was re-enacted in 1646 and 1647. It seems probable that this list of "seven persons or as the Court shall direct," was simply drawn on to fill up the board of assistants to the desired number after each of the old assistants had been voted on. In 1647 twelve assistants were chosen, and the same twelve men were elected in 1648. Mr. Doyle (Vol. I., p. 339) speaks of this law of 1644 as having "relieved the freemen from the necessity of coming to Boston for the second election, by making the voting more local." But the freemen had already been relieved from that necessity in 1637 (Records, Vol. I., p. 88. *Supra*, p. 30); since then it had been entirely optional with each voter whether he would send in his proxy or appear at the Court of Election in person.

Rotation in office was never considered desirable in choosing Massachusetts assistants. The position called for no little legal knowledge and judicial poise, qualifications which were developed by service, so that an old incumbent was rarely supplanted by a tyro. A law of 1649 gave legal force to a custom, which seems to have obtained from the founding of the colony, of putting to vote in the Court of Election the name of each of the old magistrates before any new candidate could be propounded.[1] Such a law went far toward making the assistants veritable life-officers, so that, many years later, we are not surprised to find Randolph writing: "Whoever are in the magistracy do for the most part continue till death, by the help of persons of their faction, and of a law commanding that at every new election the former magistrates be first put to vote, upon penalty of £10."[2] Another premium was put upon long service by an act of 1653, bestowing upon the magistrates allowances in proportion to the number of years they had held office.[3] Partici-

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[1] Records, Vol. II., p. 286. This law raised to twenty the number of candidates to be nominated on the preliminary ballot.

[2] Letter of Edward Randolph. Hutchinson Collection, p. 500.

[3] The early magistrates seem to have served without pay, except that the "charges of their dyot" were defrayed from the public treasury or by fines. In 1638 each town was required to pay its members of the General Court, the magistrates receiving 3*s.* 6*d.* and the deputies 2*s.* 6*d.* for each day of the session. But in 1644 the deputies were ordered to advise with their elders and freemen "whether God do not expect that all the inhabitants of this plantation allow to their magistrates and all others that are called to country service a proportionable allowance, answerable to their places and employments." (Records, Vol. II., p. 67.) Divine sanction for an honorarium to the Assistants seems to have been discovered, for during the next ten years they were granted a liberal exemption from taxes. (Records, Vol. II., pp. 101 and 239.) Approval of permanence in the magistrate's position was shown by the law of 1653 which granted £30 per annum to each magistrate who had "borne the burden of that place for the space of ten years past"; those "of lesser standing" were to receive £20, and such as should be newly elected £15. (Records, Vol. IV., Pt. I., p. 154.) In the following year the allowance of £35 was made uniform for all assistants, and their exemptions from "town and

pation in the nomination of assistants was considered not merely the privilege but the duty of each town; those failing to send in their proxies were made liable to fine at the discretion of the court.[1]

Though the charter provided that "henceforth forever" there should be eighteen assistants, there had been few years when more than half that number were chosen. The smaller board was found adequate to the performance of the functions of the office. In the early years it was hoped that the vacancies in the magistracy might prove an inducement to English gentlemen to join the colonists. The desire to maintain the high standard in this important station was an additional reason for confining the magistracy to the few who were eminently qualified for the position. Recognizing the inex-

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country rates" were renewed. (Records, Vol. IV., Pt. I., p. 204.) Besides the meager allowance, the magistrates received some perquisites, such as ferriage, etc., but these were mostly done away with when the salary was raised to £35. The dignity attaching to the office helped make it attractive. Assistants' "wives and children were left to their discretion in the wearing of apparel," in the famous sumptuary law of 1651. (Records, Vol. III., pp. 243-4.)

[1] Records, Vol. IV., Pt. I., p. 270. Subsequent changes in election methods had practically no effect upon the realization of representative government. See Records, Vol. IV., Pt. I., p. 347, and Vol. IV., Pt. II., pp. 32 and 468. For a single year the voting was entirely by proxy, none being admitted "to give votes personally at the day of election except members of the General Court" (1663, Records, Vol. IV., Pt. II., p. 86); but the next year brought a repeal of that act, as "not so satisfactory to the freemen as was expected." (*Ib.*, p. 134.) A few years later trial was made of a system which dispensed with the preliminary nomination (Records, Vol. V., pp. 261-2), but the following year the old system was practically restored. In town-meetings, votes for twenty-six candidates were cast. These ballots were sent to Boston, counted, and a list of the leading names reported back to the towns. For twenty of these candidates the freemen in town-meeting voted by Indian corn, which was then taken to Boston in sealed packets, each having the name of a candidate. On election day the corn of those who had not already voted was received and the entire vote counted, the eighteen having the highest number of votes being declared elected. (Oct., 1680, Records, Vol. V., pp. 291-2.) Such was the process of election until the cancelling of the charter.

pediency of the old charter requirement of eighteen assistants, in 1662, Charles II. ordered that in future the number should not exceed eighteen nor be less than ten, insisting that "regard be had of the wisdom, virtue and integrity of the persons to be chosen, and not of any affection with reference to their opinions and outward professions."[1]

The decade 1634-1644 witnessed the gradual solution, as occasion presented them, of many of the problems left unsolved in the organization of the crude legislative body. Thus, that the deputies must be freemen the voters of "Neweberry" learned by being fined sixpence apiece for sending a non-freeman to the General Court as their deputy.[2]

The towns which availed themselves of the permission to send deputies at first seem uniformly to have sent three. But the intention of making representation approximately proportional to population is soon seen,[3] and in 1636 it was enacted that no town having less than ten resident freemen should send any deputy to the General Court. Towns of from ten to twenty freemen might send but one deputy; towns of from twenty to forty, two; while those having more than forty freemen were allowed to "send three if they will, but no more."[4] Freemen of towns too small to send a deputy of their own might unite with some neighboring town in the choice of a representative.[5] From the very

[1] Records, Vol. IV., Pt. I., pp. 164-6.

[2] 1636. Records, Vol. I., p. 174, p. 221.

[3] 1635. Records, Vol. I., p. 157. Weymouth was allowed *one* deputy.

[4] Records, Vol. I., p. 178, Sept. 1636. The town of Weymouth, having sent three deputies to this court, "being a very small towne," at the request of the said deputies, two of them were dismissed by the court. *Ibid.* It is important to notice that non-resident freemen, though taxed in the town, were not counted in the number on which the representation was based. See "The Genesis of the Massachusetts Town," p. 44, letter of Mr. A. C. Goodell, jr. (Proceedings of the Mass. Hist. Soc., Jan., 1892.)

[5] This was the custom under the Provincial Government, when "districts" were set off by the General Court, with the privilege

beginning of representative government, towns seem to have exercised a "liberty in sending or not sending deputies," but for neglect they were liable to a fine at the discretion of the court.[1] The great increase in the number of deputies, due to the founding of new towns, aroused the fear that they

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of uniting with the parent town in sending representatives. *E. g.* Carlisle was set off from Concord as a self-governing district, which should unite with Concord in choosing and paying representatives to the General Court. (Provinc. Laws, 1753-4, Cp. 36.)

[1] Winthrop, Vol. I., p. 362, n. With certain limitations the same has been true under the Provincial Government and under the State Constitution. Dover (Records, Vol. IV., Pt. I., p. 67) was "fined teene pounds for their neglect in not sending a deputy to this Court the last session nor this neither," 1651. The freemen of Watertown (1639, Records, Vol. I., p. 273) were fined £3 for sending their deputy away, "being to have attended the Court." The question whether the charges of the deputies were to be borne by the towns sending them or by the public at large had much to do in determining whether a town cared to send deputies or not. To a weak town the expense was considerably greater if it were called upon to pay its own deputies' expenses than if assessed for its share of the whole amount in a general tax. Hence we find towns trying to get out of sending deputies, preferring to be unrepresented than to bear their deputies' expenses. Thus Dover and Springfield were exempted from sending deputies except to the county elections. (Records, Vol. II., p. 41.) In 1693, the town of Groton was not a little stirred up over this question. February 6, "the inhabitants being met togather for to Consider of sum waye for to preuent futar unnessesary charges did by uott declare that they would petishone unto the genaraill Court that ther representetiue might be relesed from atending the Seshone any more." May 15, at a special meeting, "the town did by uote declare that they would not send nor Choose any parson nor parsons for to Represent them at the great and genaraill Corte of asembly. John page sener Jeams Kemp John Stone and William Longley se desent from this uote John farnworth and Steuen holden. The Town Resons is they do not iudg themself layable wether acordind to Law nor Charter." Yet October 30, the town proceeded to choose a deputy. (Early Groton Records, pp. 107 and 109.) In 1653, towns not having over 30 freemen were allowed for the future to "be at their liberty for sending or not sending deputies to the General Court." (Records, Vol. IV., Pt. I., p. 154.)

Under the first charter the law as to the pay of deputies was frequently changed. In 1636, "to ease the public" it was voted that deputies' charges be borne by the towns sending them. (Records, Vol. I., p. 183.) But in the following year "the former order for the charge of the deputies to be borne by the country"

would overbalance the assistants, and in 1639, against much opposition from the freemen on the ground that it was an infringement of their liberties, a law was passed limiting to two the number of deputies that a single town might send.[1] At the next session the opposition to this limitation was renewed, but proved unavailing.

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was re-established. (*Ib.* p. 187.) By a law of 1638 each town was to pay its own members of the General Court, the magistrates receiving 3*s.* 6*d.* and the deputies 2*s.* 6*d.* for each day of service. In 1639 the "charges of the dyot" of both deputies and assistants were to be borne by fines (*Ib.*, p. 261), but by act of 1643 the towns were to "satisfy the dyet" of the deputies by contributions of cattle, wheat, malt and barley. (Records, Vol. II., p. 101.) In accordance with a law passed a few months later, and re-enacted in 1653, the several towns, until the cancelling of the charter, paid their own deputies' expenses, either in money or in provisions. (Records, Vol. II., p. 140; Vol. IV., Pt. I., p. 154.)

[1] Records, Vol. I., p. 254. Winthrop, Vol. I., pp. 361-2. From this time Boston sends but two deputies. The rapid growth of that town made its representation very inadequate, and the court was repeatedly petitioned for permission to send deputies in proportion either to the number of freemen or to the number of churches. See Boston Records, 1661-1701; p. 26, 1665, and p. 133, 1679. In these "instructions" to the committee which was to present Boston's grievances before the General Court, emphasis was laid upon the fact that according to law a town having twenty freemen might send two, the maximum number of deputies, so that the freemen in excess of twenty in any town were entirely without voice in the legislature. "And shall 20 Freemen have equall priuiledge with our greate Towne, yt consists of neere twentie times twentie freemen, and beares theire full proportion of all publique charges?" This time they did not petition in vain. Permission to send a third deputy was granted. Records, Vol. V., p. 305. Boston Records, p. 145. Boston's apportionment was raised to four under William and Mary, and that remained her quota throughout the provincial period. Winthrop, Vol. I., p. 362, note.

Liberty was given to the towns, 1642, to send but one deputy each to the next session, but this experiment seems never to have been repeated. Records, Vol. II., p. 3. See also p. 209.

In 1651, upon motion of the deputy of Springfield in behalf of "their town," the General Court made it optional with the men of Springfield whether they would send a deputy to the latter session of the General Court each year, or not. Records, Vol. IV., Pt. I., p. 67. Two years later, towns having not more than thirty freemen were permitted to send deputies or not, as they should choose. The same statute required that every town represented in

In 1636 it was enacted that instead of four General Courts only two regular Assemblies should be held each year.[1] Deputies continued to be elected for each of these courts separately until seven years later, when for the first time it was proposed that the deputies should be chosen for an entire year, as were the assistants.[2]

During these years the deputies asserted for themselves many of the privileges which the English House of Commons had acquired. In the very first year of the remodeled General Court an act was passed making it lawful for the deputies meeting together before each General Court, to decide upon disputed elections of any of their number, and to "order things amongst themselves that might concern the well ordering of their body."[3] But a few weeks later occurred a characteristic rejection of duly elected members. Salem's deputies were sent back to their constituents and the town was disfranchised until her deputies should bring satisfaction for certain letters sent out by the church of

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the General Court should bear the entire charges of its deputies. Records, Vol. IV., Pt. I., p. 154.

The rapid increase of the deputies was viewed with alarm by those who wished to preserve a carefully balanced government. Accordingly in 1644 there was submitted to the freemen of the various towns a very complicated scheme by which twenty deputies were to be chosen, being apportioned according to population among the four shires into which the colony had just been divided. Out of the twenty thus elected there were to be taken, in the order of the number of votes received, only a number of deputies equaling the number of the assistants for that year. It was hoped by this process to secure deputies of the highest ability. As deputies and assistants would be just balanced in number, the assistants promised to give up their "negative voice." Records, Vol. II., p. 88. Winthrop, Vol. II., pp. 262-3. This plan did not secure the approval of the towns and was never put in practice. At the next General Court the names of thirty-three deputies are recorded.

[1] Records, Vol. I., p. 170. [2] 1643. Records, Vol. II., p. 47.

[3] 1635. Records, Vol. I., p. 142. Shortly before this, Mar. 5, 1635, a commission of five, appointed by the General Court, sent back two of the three Ipswich deputies, as "unduly chosen." Records, Vol. I., p. 135.

This power of the house of deputies alone to act concerning the election of its own members was formally conceded by the magistrates in the following note: "The magistrates think fit to declare

Salem, "wherin they had exceedingly vilyfyed the magistrates & deputies of the General Court"; or until those letters should be disclaimed by the majority of the freemen of the town.[1]

Far more important than any questions of apportionment, or of power to decide disputed elections, was the question of what should be the relation between the old board of assistants and the newly constituted body of deputies. The sending of deputies having taken its rise because of the arbitrary assumption of power by the assistants, it is natural that from the first the attitude should have been that of bitter jealousy. The General Court was indeed "a mixed company, part aristocracy and part democracy."[2]

Six months had not passed before these warring elements of the General Court crossed swords over the question of the removal of Mr. Hooker and his Cambridge congregation to Connecticut. In favor of their departure were the Governor, two assistants and fifteen deputies; opposed to it were the Deputy Governor, "all the rest of the assistants,"

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that the deputies ... may supply their own company according to their liberty and the law established." 1647. Records, Vol. III., p. 119.

[1] Roger Williams was then pastor of the Salem church. Records, Vol. I., p. 156. Winthrop, Vol. I., p. 195. The controversy with Wheelwright in 1637 was the occasion of the dismissal of several deputies who upheld him. Records, Vol. I., pp. 205 and 236. Even disfranchisement and banishment were added in the case of William Aspinwall (p. 207). An interesting instance, free from such ecclesiastical prejudice on the part of the deputies, is found in Records, Vol. III., pp. 3 and 5.

[2] Johnson's "Wonder Working Providence," 1637. 2 Mass. Hist. Coll., Vol. IV., p. 22. Yet, despite the jealousy constantly manifest in the records of the General Court, the great influence which the "gentry" exercised over the "commonality" is shown in the institution (Mar., 1636. Records, Vol. I., p. 167) of a standing council, to which a certain number of magistrates should be elected for life. "The reason was for that it was showed from the word of God, etc., that the principal magistrates ought to be for life." (Winthrop, Vol. I., p. 219.) Winthrop, Dudley and Endicott were elected. The real motive of this innovation seems to have been a wish to institute some exclusive body, membership in which might prove attractive to Lord Brook and Lord Say and Sele,

and ten deputies. Since six assistants were not "in the vote," as required by the charter, no record was entered.[1] The deputies would not yield a veto to a minority of the court; on the other hand, the assistants clung firmly to their "negative voyce" as their only check upon the overwhelming numbers of the deputies. The dispute became violent. All business of the session was at a standstill. Finally, by the agreement of both assistants and deputies, recourse was had to the Puritan panacea for all moral and political ills, a day of fasting, humiliation and prayer. Mr. Cotton preached, upholding the authority of the magistrates, subject to an ultimate appeal to the people. So successful were his exhortations that "the affairs of the Court went on cheerfully; although all were not satisfied about the negative voice to be left to the magistrates."[2] Without conceding the principle in question, the deputies yielded in this special case.[3]

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whose coming they were anxious to secure, although unwilling to adopt the scheme for an aristocratic order, proposed by those gentlemen. (Doyle, Vol. I., p. 189.) This council served no useful purpose not already sufficiently provided for, and after three years all substance of its power was withdrawn. Records, Vol. I., pp. 167 and 264. Winthrop, Vol. I., pp. 219 and 364. Mr. Savage (Winthrop, Vol. I., p. 364, note) declares this the only instance in which election for life has obtained for any legislative or executive office in the United States.

[1] Winthrop, Vol. I., pp. 167 to 169. Of the whole body the vote was 18 to 16 in the affirmative. At the last Court of Elections, nine assistants had been chosen, but only seven of them "qualified" by taking the oath. Records, Vol. I., p. 118.

[2] Winthrop, Vol. I., p. 169. In this struggle with the "plebeians," the "patricians" found "no occasion for prodigies, or other arts of the priests of Old Rome. A judicious discourse from a well-chosen text was more rational, and had a more lasting effect." Hutchinson, Vol. I., p. 47.

Cotton's influence could always be counted on against democracy. In a letter to Lord Say (Hutchinson, I., Appendix 490-5) he writes, "Democracy I do not conceive that ever God did ordain as a fit government, either for church or commonwealth. If the people be governors, who shall be the governed? As for monarchy, and aristocracy, they are both of them clearly approved and directed in scripture, yet so as referreth the sovereignty to himself, and setteth up theocracy in both, as the best form of government in the commonweatlh, as well as in the church."

[3] In 1636 there was devised a way of averting the constantly impending danger of a deadlock. A joint committee, composed of an equal number of deputies and assistants, might be chosen, who

Tradition tells of notable services rendered by animals in certain great national crises. A wooden horse was the destruction of Troy. A flock of cackling geese was the salvation of Rome. But not until the middle of the seventeenth century does sober history tell us of the service of a stray sow—and perhaps a dead sow, at that—in hastening on the solution of a great constitutional controversy. This came about by reason of the legislature's being the supreme court of appeal within the colony. In the year 1636 there was brought to Captain Keayne, a wealthy but crabbed citizen of Boston, a stray sow. Though he had it cried a number of times, no owner appeared. After keeping it for a year in a yard with a sow of his own, a poor woman named Sherman laid claim to it, but did not come to see it until the Captain had killed his own sow.[1] Finding then that the surviving sow did not answer to the description which she had given of her own, she circulated the story that he had killed hers. This caused much talk, and presently the case "was brought before the elders of the church as a matter of offence." Keayne was cleared. Urged on by others (principally by one George Story, who "kept in her house," and had recently been brought before the Governor on complaint of Captain Keayne, "as living under suspicion"), Dame Sherman brought suit against Keayne in the inferior court at Boston. Not only was the Captain again cleared, but the jury awarded him £3 for his costs, and upon his bringing a counter-suit for slander, he having been charged with stealing the woman's sow, he was given a verdict of £20.[2]

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with an umpire, selected by themselves, might decide the question at issue. In a heated controversy only the majority of assistants and of deputies would tend to be represented on the opposing sides of this committee, so that the real decision would be thrust upon one man, the umpire. It was a poor palliative, not a cure of the real difficulty. Records, Vol. I., p. 170.

[1] Dame Sherman was no "poor *widow*," as Doyle (Vol. I., p. 31) calls her. Her husband was at this time in England (Winthrop, Vol. II., p. 84), but the suit was brought in his name, and in the later stages of the case he conducted it.

[2] Instead of putting an end to the case, this verdict was just what kept it from lapsing. Popular sympathy never could look

The next appeal was to the General Court. Here it was that pork and politics first came in contact. The case aroused all the old clashing between deputies and assistants, and speedily showed how ill fitted is an elective legislature to serve as a judicial body. Feeling ran high. There can be no doubt that the weight of evidence and the fact of legal possession were on the side of Captain Keayne. He was, moreover, a man "very useful to the country both by his hospitality and otherwise." "But," says Winthrop, "one dead fly spoils much good ointment,"—the Captain was "of ill report in the country for a hard dealer in the course of his trading"; by both court and church he had been censured for his sharp practices, and now when his opponent was a poor woman, popular sympathy instantly arrayed itself against him. Seven entire days did "the Great and General Court" devote to this case, yet was no decision reached. In 1636 it had been enacted that no law, order or sentence should pass as an act of the court without the consent of a majority of assistants and also of a majority of the deputies.[1] But when, in this famous case, it was "propounded to vote; whether the defend^t^ bee found to have bene possest of the plaintiff's sowe & converted her to his owne use, or not: it was voted by 2 ma^trats^ & 15 deputies for the plaintiffe, & by 7 ma^trats^ & 8 deputies for the defend^t^, & 7 deputies were newters,"[2] refraining from voting, in accordance with instructions from their constituents. Thus a majority, not only of the deputies, but of all voting was in favor of the plaintiff, by a vote of seventeen to fifteen, but in the face of the opposition of the "greater parte of the magistrates," no verdict could be rendered. At this result there was much outcry against the negative voice of the magistrates on the ground that it alone had hindered a poor woman's obtaining justice. This called from one of the magistrates a vigorous defense of their veto power.

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at it in any other light than that Dame Sherman had been fined £20 for trying to recover her own property.

[1] Records, Vol. I., p. 170.

[2] June 14, 1642. Records, Vol. II., p. 12.

After having come before church, court and assembly, "the sow business not being yet digested in the country," the elders felt called to meddle with it.[1] For the express purpose of settling this matter they summoned a great meeting which was attended by almost all the ministers and magistrates in the colony, as well as by many deputies. But for once a question had been found which baffled the omniscience of the Massachusetts elders. They gave the case up as hopelessly complicated, and "earnestly desired that the court might never be more troubled with it."[2]

On the plea of new evidence, however, the General Court was petitioned for another hearing. Sympathy for the poor as against the rich, and also the desire for definite victory in their controversy with the assistants, led the deputies to favor the renewal of the case. Fortunately some friends of Captain Keayne succeeded in persuading him to restore to his prosecutor the few pounds which he had taken under the old verdict, and so after seven years of agitation this dispute was settled out of court.

But by far the most important point in this "politico-porcine case" remained still undecided. The deputies clamored for the repeal of the assistants' veto power. One of the assistants wrote a pamphlet strenuously maintaining its necessity and usefulness "by many arguments from scripture, reason, common practice, etc.," but another assistant published a sharp rejoinder, which claimed to avoid all those arguments.[3] In this confusion, at the request of the assistants, recourse was again had to the elders—that oracle to which the Puritans ever turned for infallible counsel on subjects legal and political no less than religious. Again the elders succeeded in soothing the freemen and their deputies, so that the question at issue was once more left undecided.

But the following year, 1644, when the heat of controversy

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[1] Winthrop, Vol. II., p. 139.

[2] *Ibid.*

[3] Governor Winthrop, who from the beginning had been vigorously opposed to a mere majority's exercising controlling power, also entered the lists as a pamphleteer and "set forth a writing about the sow business" which gave such offense because of its

was past, and the question of the veto was no longer redolent of pork, upon motion of the deputies, but apparently with no decided opposition, it was enacted that in future the General Court should sit and vote in two chambers; bills might originate with either the assistants or the deputies, the approval of a majority in each chamber being necessary to the passage of any act.[1] "This change," says Palfrey, "not by hurtfully withdrawing a power from the magistrates as had been attempted, but by beneficially conferring an equal power upon the deputies, determined the great contention about the negative voice, and completed the frame of internal government of Massachusetts, destined to undergo no further organic change for forty years."[2]

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oracular tone that he felt constrained to apologize to the General Court for its publication, acknowledging that in his language "he did arrogate too much to himself and ascribe too little to others." Winthrop, Vol. I., pp. 141-2. This interesting manuscript may be seen in the library of the American Antiquarian Society, at Worcester, Mass. For Winthrop's pamphlet on the veto, see Life of W., Vol. II., p. 427, and Doyle, Vol. I., pp. 251-8.

[1] March, 1644. Records, Vol. I., pp. 58-9. The preamble of this important act runs thus: "Forasmuch as, after long experience, we find divers inconveniences in the manner of our proceeding in Courts by magistrates and deputies sitting together, and accounting it wisdom to follow the laudable practice of other states who have laid groundworks for government and order in the issuing of business of greatest and highest consequence, It is therefore ordered," etc.

An unforeseen difficulty soon required the modification of this law. The assembly was not merely a legislative body, but the highest court of appeal, and it was found that under the operation of this law many cases must remain undecided. By a concession of the magistrates it was finally provided that "if there should fall out any difference" between magistrates and deputies in any case of judicature, civil or criminal, it should be determined by the major vote of the whole body. (1652. Records, Vol. III., p. 179, Vol. IV., Pt. I., p. 82. Hutchinson, Vol. I., p. 143.)

[2] Compendious History of N. Eng., Vol. I., p. 259. The principal authorities upon this controversy are Winthrop, Vol. II., pp. 83-6, 139-144, 193. Records, Vol. II., pp. 12, 51, 58-9. Hutchinson, Vol. I., pp. 143-4. Bancroft, Vol. I., p. 248. Washburn, p. 22. Doyle, Vol. I., pp. 343-4. Lodge, p. 351.

The Plymouth legislature continued to sit as one body throughout

In the Court of Election which soon followed, John Endicott was chosen Governor and John Winthrop, Deputy Governor. Eleven assistants were chosen, and thirty-nine deputies attended the court.[1] The house of deputies proceeded to organize by the choice of a presiding officer, ever since called the Speaker, and a law was straightway passed prohibiting any outside restraint upon the deputies.[2]

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its history. In Connecticut the division into two houses took place in 1645.

In 1646 there seems to have been some agitation in favor of reuniting the branches of the Massachusetts legislature, but it was finally decided that the "House of Deputs should continew in their setting aparte & acting ap'te from the magists." Records, Vol. III., p. 62.

[1] Records, Vol. II., p. 66. The colony, with its dependencies, now comprised thirty plantations, a large number of which evidently sent no deputies. Records, Vol. II., p. 38, May, 1643.

[2] Mr. William Hawthorne of Salem was the first Speaker. Winthrop, Vol. II., p. 63. In May, 1644, "It is ordered that no member of this House shall be called to the bar but by the major vote thereof, and being first convicted of his offence." Records, Vol. III., p. 3.

Another controversey between the deputies and assistants arose over the question of who composed the "Standing Council of the Commonwealth." In 1643 (Records, Vol. II., p. 46) the General Court, at its adjournment, committed the affairs of the colony, in the interval before the next court, to a committee consisting of the assistants together with the deputies of Boston and the four neighboring towns. But the assistants claimed to be constituted by patent the "Standing Council." When the dispute was renewed in 1644 the deputies conceded for the time being that the Governor and assistants should act as the Council. At a later session in the same year the matter received a thorough discussion, the elders being called in to arbitrate. They maintained that both by patent and by the election of the people the assistants were the "Standing Council of the Commonwealth" in the vacancy of the General Court. They then proceeded, at the request of the Assembly, to expound the division of powers. The legislative and supreme judicial power, they said, belonged to the General Court, consisting of Governor, assistants and freemen, acting through their deputies. To the Governor and assistants belonged all other judicial power (except appeals and removals from office), being conferred not by vote but by the patent. The freemen, however, determined by their election in whom this power should be vested. These propositions were discussed and approved by the General Court. Records, Vol. II., pp. 90-6. Winthrop, Vol. II., pp. 202-6, 250-7.

CHAPTER IV.

Representation and Suffrage. 1644–1689.

The powers which were exercised by the General Court during the second half of the seventeenth century are well summarized by a sharp critic of Massachusetts institutions. In 1676 Edward Randolph reported that legislative power was vested in a General Court consisting of Governor, Deputy-Governor, Assistants and Deputies, all elected annually. Besides being the supreme judicature of the colony, this General Court had power to "make laws, raise money and lay taxes upon the whole colony, dispense lands, give and confirm properties, impeach, sentence and pardon, and receive appeals from all inferior courts, and could not be adjourned or dissolved without the consent of the major part." The Governor had a casting vote in all Assemblies, and the Governor and assistants constituted the executive power of the colony.[1]

It is hard to see why special provision need have been made for the orthodoxy of deputies while church-membership was still a condition of admission to the franchise; yet before any relaxation of that requirement had been made, the pious fathers of Massachusetts, seeing that "the safety of the commonwealth, the right administration of justice, the preservation of peace and the purity of the churches of Christ, under God, doth much depend upon the piety, wisdom and soundness of the General Court, not only magistrates but deputies," decreed that in the future "no man, although a freeman, shall be accepted as a deputy in the General Court that is unsound in judgment concerning the main

[1] Hutchinson Collection, p. 477.

points of the Christian religion as they have been held forth and acknowledged by the generality of Protestant orthodox writers, or that is unfaithful to this government." Any freeman who should knowingly vote for such an unfit candidate was liable to a fine of five pounds.[1] Another restriction equally foreign to our present ideas of the qualifications of a deputy was that which excluded from the lower house "any person who is a usual and common attorney."[2] This had its temporary justification in the fact that the General Court, serving as the court of appeal, would deal with many cases in which these lawyers were interested parties. Promptness and regularity of attendance were required of the deputies under penalty of heavy fines.[3]

The upper house of the General Court underwent little change. In *personnel* and in sentiment it was a much more aristocratic body than the house of deputies. Both legal knowledge and executive ability were requisite in this office, and the freemen, in seeking for the most eminent candidates upon whom to bestow this high dignity, found the greater part of them among the rich and highly educated citi-

[1] 1654. Records, Vol. IV., Pt. I., p. 206. A prosecution under this law is noticed, *Ib.*, p. 263. Prominent as was ecclesiastical influence upon politics, service at the same time in ecclesiastical and political office seems to have been avoided. As early as 1632 the Boston congregation sought advice from her sister churches of "Plymouth, Salem, etc.," "whether one person might be a civil magistrate and a ruling elder at the same time." This was "agreed by all negatively," but there was no unanimity as to which should be laid down. (Winthrop, Vol. I., p. 97.) In Boston, 1650, a special town-meeting was called to elect a deputy "in the stead of James Penn who was chosen by the church for other service." (2d Rep. of Bos. Rec. Com., p. 100.)

[2] Records, Vol. IV., Pt. II., p. 87.

[3] Records, Vol. IV., Pt. I., p. 203. £100 fine if absent during the first three days of the session. This statute provided for careful returns from the elections. By a later law (*Ib.*, p. 261) deputies chosen for but one session were denied the same "benefit of lawe" as those chosen for the whole year. The fine for an assistant's absence without the consent of both houses was 30*s. per diem*, double that of a deputy. Records, Vol. IV., Pt. I., pp. 20-24.

zens of Boston and the neighboring towns. The conservatism natural to such a body of men was strengthened by the manner of their election, which practically ensured them life-tenure of office.[1] Thus while elected annually as representatives of the whole colony, the assistants formed practically a permanent body of well-to-do gentlemen mainly from one locality. On the other hand, while residence in one's constituency was not yet required, the deputies came from all sections of the colony and reflected its every shade of opinion. It was inevitable that bodies so differently constituted should often find themselves in disagreement. Thus in 1683, when the colony was summoned by a writ of *quo warranto* to appear in behalf of its charter, the assistants, coming from the section most affected by intercourse with England, were in favor of submission; the deputies, however, stood for stubborn resistance.[2]

Some account has already been given of the religious test introduced by the law of 1631, and of the later enactments which tended to make that test the more odious.[3] In a rapidly developing community such laws could not long remain unchallenged. Agitation soon began for the removal of dissenters' civil disabilities. In 1644, at the suggestion of the Commissioners of the United Colonies, there was submitted to the General Court a proposition "yielding some more of the freeman's privileges to such as were no church-members that should join in this government."[4] Though nothing was then determined, it was a decided gain that it had come to be recognized that non-members had grievances

[1] *Supra*, p. 13, note 1.

[2] Mass. Hist. Coll., 3d Series, Vol. I., p. 74. The spirit of the two bodies is illustrated by an incident in the year 1685. The Treasurer having refused to serve, the assistants proceeded to choose a successor, "but the Deputies would have it done by the Freemen that their Priviledges may not be clipt, as many of them have of late beene." Sewall Papers, Vol. I., p. 100.

[3] *Supra*, pp. 14 and 25.

[4] Winthrop, Vol. I., p. 193.

worthy the attention of the Court. From this time to the day of their removal they were not allowed to be forgotten, but entered constantly into colonial politics.[1] Two years later Winthrop tells us that an act was on the point of passing which might modify somewhat the qualifications for freedom, and would allow non-freemen equal power with freemen in all town affairs.[2] But the over-zeal of certain dissenters put an end to all spirit of concession. Just at this inopportune time there was presented a petition signed by a number of gentlemen of position and intelligence, praying that distinctions which had been maintained both in civil and church estate might be removed, that they might be governed by the laws of England, and that members of the churches of England and Scotland might be admitted into communion with the churches of the colony. If their petition were not granted they declared they would be obliged to appeal to Parliament. They pressed for an immediate answer, but the matter was put over to the next court. An attempt to carry out their threatened appeal was frustrated by the seizure of their two delegates on the eve of their departure.[3] Search of their papers brought to light two peti-

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[1] The assistants seem to have been more favorably inclined to the cause of the unenfranchised than were the deputies, but avoided allying themselves with this *majority* of the inhabitants out of fear of making themselves obnoxious to the freemen—the *minority*, which elected both deputies and assistants. *Ib.*, pp. 208 and 209, note.

[2] *Ibid*, p. 321.

[3] The petition and other documents connected with this episode may be found in "New England's Jonas Cast up at London." (Peter Force's "Tracts and other Papers," Vol. IV.) See also Winthrop, Vol. II., p. 319. Prominent among the signers was Mr. Samuel Maverick, who had been admitted to freedom at the first General Court in Boston. (*Supra*, pp. 14 and 15.) Winthrop declares him "worthy of a perpetual remembrance" for his good deeds (*Ib.*, Vol. I., p. 143), but he had never been chosen to any office, being an Episcopalian. His offense in being connected with this petition was considered "far the greater because he had taken the oath of fidelity to the government, and enjoyed all liberties of a freeman." *Ib.*, Vol. II., pp. 353 and 367.

tions, and a set of queries to be resolved by Parliament, which gave great offense to the General Court.[1] Heavy fines and imprisonment were imposed upon the petitioners.

It would be far from just to regard the summary treatment which these dissenters received as due simply or mainly to their plea for an enlargement of their political and religious privileges. It was in their attempted appeal to Parliament that their real offense consisted. The allowance of such an appeal would have been tantamount to yielding what the Massachusetts colonists would never concede, that their government, within the limits marked out by the charter, was not absolute. Under any circumstances an attempted appeal would have met fierce opposition, but just now it was especially dangerous; for at this time ecclesiastical affairs were in a very unsettled condition in England, and agitation on the part of the petitioners might very possibly have led to the setting up of Presbyterianism in Massachusetts, a result which would have been a far greater hardship to the body of Massachusetts citizens than the existing system placed upon the unenfranchised.[2] There was another point upon which the petitioners and the colonial authorities squarely joined issue. The petitioners claimed that the liberties and privileges in the charter belonged to all free-born Englishmen living in the colony; whereas their opponents maintained that the charter originally conferred these powers and privileges upon a limited company of freemen, with the right of self-extension, and that therefore it was

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[1] In this exigency Mr. Edward Winslow of Plymouth was sent to England to appease the ill-will which this agitation bade fair to arouse in Parliament. So successful was his mission that not only did the non-free petitioners receive no encouragement, but assurance was given by the Committee of Lords and Commons that it was not their intention "to encourage any appeals from your justice, nor to restrain the bounds of your jurisdiction to a narrower compass than is held forth by your letters patent." Winthrop, Vol. II., p. 389.

[2] See Doyle, Vol. I., p. 373. Palfrey, Vol. II., p. 169. How real were the grievances of dissenters is feelingly pictured by Thomas Lechford, "Plain Dealing," 1647, ed. by J. H. Trumbull, p. 59.

right that they should be granted only to such as the Governor and company should think fit to receive into that fellowship.

That the relatively small proportion which the freemen bore to the total adult male population was due in large measure to other causes than Puritan bigotry is conclusively shown by Edward Winslow, the skilful apologist who was sent to England to conciliate Parliament and the Commissioners. He writes: "And however there are many that are not free amongst us, yet if understanding men and able to be helpful it's more their own faults than otherwise oft-times who will not take up their freedom lest they should be sent on these services; and yet it is the same with many thousands in this kingdom (England) who have not liberty to choose; nor yet may the freeholders choose any that are not freeholders, freemen and gentlemen of such a rank as are chosen."[1]

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[1] "New England's Salamander Discovered," 1647. Mass. Hist. Coll., 2 Series, Vol. III., p. 137. Apparently Winslow includes only members of the orthodox Puritan churches as "understanding men and able to be helpful"! But that he was warranted in saying that many refused to become freemen from a wish to avoid the duties involved appears from other records. In 1643 the court ordered that "the churches should be written unto, to deal with" any members who should refuse to take up their freedom. (Records, Vol. II., p. 38.) Apparently this "dealing" was too mild, for three years later, "there being within this jurisdiction many members of churches, who, to exempt themselves from all public service in the commonwealth, will not come in to be made freemen," it was ordered that such members should not be exempted from public service, and in case of refusal to serve in any office to which they had been elected, they should be liable to the same fine as regular freemen. (Records, Vol. II., p. 208.) There was much force also in Winslow's reference to the restricted suffrage in England at this time. The tests were less odious, but it may be doubted if the proportion who could exercise the suffrage in England (having gained the right by birth, purchase, marriage, apprenticeship, possession of property or by membership in some guild or trade corporation) was much greater than in Massachusetts. (Frothingham's History of Charlestown, p. 50, n. 2.)

What petitions and threats were thus unable to secure from Massachusetts she readily granted in special instances when an opportunity was presented of enlarging her borders. Massachusetts was ever an aggressive colony, and the religious test was not allowed to stand in the way when insistence upon it would have prevented the acquisition of valuable territory. As early as 1639 the inhabitants of Dover made overtures to the General Court for incorporation with the Bay colony. The settlements upon the Piscataqua were too weak to be self-dependent, and too inharmonious to unite in defense. In coming under the jurisdiction of Massachusetts they had hope of enjoying a better ordered government. Accordingly the proprietors yielded their rights to the General Court, and commissioners were sent to secure the submission of the inhabitants. The point of special interest to us in this transaction is that "though they bee not at present church-members," all the inhabitants of these towns who had been "free" there were immediately "to enjoy the like liberties as other freemen do within the said Massachusetts government," were to manage their own town affairs, and were allowed to send two deputies "from the whole ryver" to the General Court at Boston.[1] The next year the inhabitants of Exeter were received upon equally liberal terms.[2] Ten years later, with very little variation, Massachusetts employed this process of absorption in the case of the Maine settlements. A little insistence persuaded the inhabitants of Kittery to submit; upon taking the freeman's oath they were granted the full franchise of Massachusetts without the imposition of any other test, and were given permission to send a deputy to the General Court.[3] Other towns followed this

[1] Records, Vol. I., pp. 325, 343; Vol. II., p. 29. Winthrop, Vol. I., p. 185; Vol. II., pp. 45, 50 and 51.

[2] Records, Vol. II., p. 43.

[3] 1651. Records, Vol. IV., Pt. I., pp. 122-6 and 129. In the case of Wells, Saco and Cape Porpoise the privilege of sending a deputy is not specially mentioned. Palfrey (Hist. of N. Eng., Vol. II., p. 387) says that these towns did not as yet receive that privi-

example, and in 1658 the submission of the Maine settlements was complete.

This aggressive territorial policy had more far-reaching results than the bringing of all the settlements north of Plymouth under the sway of Massachusetts. By each of these successive bestowals of citizenship it was virtually conceded that the religious test, still insisted on at home, was not an essential qualification for admission to the franchise. Quite a large proportion of the freemen now under the government of Massachusetts had been admitted upon the mere taking of the freeman's oath, and this must have not only increased the well-founded discontent of the dissenters, but must have also supplied them with partisans in the very center of authority.[1]

How decided a break Massachusetts here made with her policy of requiring religious conformity as a condition of citizenship appears only when it is seen how few even of the church members among the newly admitted freemen can have been in sympathy with her Puritan system of worship. Of the New Hampshire settlements, Dover to be sure was Puritan, but the church at Strawberry Bank was Anglican, while Exeter was an Antinomian colony which had been founded by Wheelwright, the heretic leader whom Massachusetts had recently been at great pains to banish. The Maine settlements followed the Anglican form of worship; indeed, in the formation of the Confederation of 1643 the fact that "those beyond Pascataquack ran a different course from us both in their ministry and civil administration" was given as the all-sufficient reason for their exclusion from that league. Yet only a decade later, Puritan Massachusetts received Anglican Maine to her bosom!

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lege. Wells, however, sent one in 1654 and Saco in 1659. It seems not unlikely that they did not send them earlier because unwilling to bear their expenses, as the law then required.

[1] The Maine settlements alone contributed 166 freemen, and in the General Court of 1659 four out of the thirty-four deputies represented constituencies where the religious test had not been required.

Though the dissenters' attempt to force an entrance into the Puritan stronghold had resulted only in failure, it was soon followed by a liberalizing movement within the Congregational church itself which tended to make the conditions of membership, and hence of freedom, less rigorous. A synod of Massachusetts and Connecticut divines in 1657 decided that parents who had been baptized in infancy and who, having led exemplary lives though without having completed their church connection, "would own for themselves their baptismal vows," "ought to be allowed to present their children for baptism." This assuming of baptismal obligation was called by opponents 'taking the Half-Way Covenant.'"[1] This was virtually recognizing a partial church-membership in persons who had made no formal profession and subscribed to no creed. In neither colony was any legal efficacy given to the decision. In Massachusetts five years later the same opinion was reaffirmed by the clergy, and the General Court ordered the "result of the Synod" to be printed, and "commended the same unto the consideration of all the churches and people of this jurisdiction."[2] Here ended legislative action on the matter.[3] There was no statutory change of the basis of the franchise, but as individual churches gradually adopted more liberal conditions of admission and were therein sanctioned by the General Court, it resulted that the operation of the religious test became less odious and the suffrage was not a little broadened.[4]

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[1] Palfrey, "Compendious History," Vol. II., p. 19.

[2] Records, Vol. IV., Pt. II., p. 60.

[3] The statement, "The decision of the clergy was approved by the General Court of Massachusetts in 1662, which decided the question of citizenship for this colony" (Lauer, Church and State in New England, J. H. U. Studies, Tenth Series, II-III., p. 59) seems to the writer to exaggerate both the action of the General Court and its effect.

[4] Records, Vol. IV., Pt. II., p. 493. Palfrey, Vol. II., p. 489. Doyle, Vol. II., pp. 248 and 460.

While the religious test was being thus assailed by petitions, by the dictates of policy and by the liberalizing movement within the church itself, the privileges open to non-freemen had been not a little extended. In 1647 the General Court, "taking into consideration the useful parts and abilities of divers inhabitants amongst us, which are not freemen, which, if improved to public use, the affairs of this commonwealth may be easier carried (to) an end," voted that non-freemen of twenty-four years or over, of good character, who had taken the oath of fidelity, might act as jurymen, vote on local affairs in town-meetings, and be chosen to town offices, provided that majority of all boards of selectmen should be freemen.[1] This was a long step toward popular government, nor can it be doubted that the practice in town-meeting was much more liberal than the theory which appeared in the laws of the statute-book, so that it is not unlikely that the non-freemen often found expression for their choice, even in the election of colonial officers and in the determination of public policy.[2]

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[1] Records, Vol. II., p. 197. In Haverhill, 1685, it was found that the majority of the selectmen were not freemen as this law required, "and so without reflection or disrespect Daniel Bradley was left out, and Josiah Gage chosen in his room." (Hist. of Haverhill, p. 141.) For many examples of non-freemen's holding town offices and high appointments, see History of Watertown, p. 1016.

The fewness of the freemen in some of the towns reduced their influence to a very low point, and in the Records are noticed several petitions asking for relief. To these the General Court answered in accordance with the spirit of the time. Political influence was not to be secured by reducing the number who should be represented by a deputy, or by "gerrymandering" the colony in favor of the aggrieved section, but "In answer to their (*i. e.* the citizens of Scarborough and Falmouth) request for the augmentation of freemen, this Court declares that it is the best expedient to obtain the ends desired that those parts furnish themselves with an able, pious and orthodox minister, and commend that to them." (May 31, 1670, Records, Vol. IV., Pt. II., p. 452.)

[2] Mr. C. F. Adams (Genesis of the Massachusetts Town, pp. 38-40) cites a number of instances from the Braintree Records which indicate great laxity in confining the voting of non-freemen within

Massachusetts had good cause for concern at news of the Restoration. To be sure she had not, like some of her sister colonies, formally acknowledged the Commonwealth, but the independent, self-aggrandizing policy which she had pursued could not fail to be distasteful to a jealous Stuart, even if it had not raised up a swarm of enemies of the Puritan colony who now importuned the King with complaints and petitions for relief.[1] In the summer of 1662 the special agents who had been sent to England to answer the attacks which were being made upon the colony, returned bringing a letter from the King.[2] So far as the charter was concerned this letter was reassuring, for it confirmed that instrument, and granted indemnity for offenses committed under the Commonwealth. For the Quakers the King no longer demanded tolerance, but he insisted that such as wished to use the Book of Common Prayer should be admitted to the sacraments. The wisdom, virtue and integrity of the candidates, he directed, should be the only considerations in the choice of Governor and assistants.[3] The most far-reaching demand was that "all freeholders of competent estates, not vicious in conversation, and orthodox in religion (though of different persuasions concerning church government) may have their votes in the election of all officers, both civil and military."

That the oath of allegiance be required and that justice be

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legal limits. Any one who has attended a Massachusetts town-meeting of the present day will acknowledge that in the primitive assemblies the voting of inhabitants was probably not subjected to very close scrutiny. The laxity which Mr. Adams describes is, however, so far as the writer's experience goes, not duplicated in the smaller towns. Hearing a vote challenged is not there uncommon. That a similar supervision was exercised in the early town-meetings is shown by non-freemen being sometimes fined for "having hand in the undewe election" of a deputy. Records, Vol. I., p. 221.

[1] Hutchinson Collection, pp. 324-30. Records, Vol. IV., Pt. I., pp. 450-4.

[2] Dated June 28, 1662. Records, Vol. IV., Pt. II., pp. 164-6.

[3] *Supra* p. 35.

administered in the King's name were the only demands in the royal letter which were not ignored.[1] Accordingly in the spring of 1664 a Royal Commission was sent over by the King to adjust controversies and inspect the administration of the colonial governments. In the other colonies the Commissioners met with ready obedience, but in Massachusetts their action was thwarted at every step. A few weeks after their arrival, however, the General Court thought it wise, in anticipation of attack, to comply in form with the King's requirement that the suffrage be open to dissenters. Declaring all laws excluding non-members from freedom to be now repealed, the Court proceeded to enact that in future, all Englishmen twenty-four years of age, who were householders and settled inhabitants of the jurisdiction, upon presenting a certificate signed by the minister of their town to the effect that they were "orthodox in religion and not vicious in their lives," and also a certificate signed by a majority of the selectmen of their town declaring that the applicants were freeholders and rateable "in a single country rate to the full value of ten shillings," *or*, that they were "in full communion with some church amongst us," might "from time to time present themselves and their desires to this Court for their admittance to the freedom of this Commonwealth and should be allowed the privilege to have their desire propounded and put to vote in the General Court for acceptance to the freedom of the body politic by the suffrage of the major part."[2] With a certificate required from a minister of the dominant church, and another from the selectmen, a majority of whom by colonial law must be freemen, together with a high property qualification for non-members from which communicants were entirely exempted, with all these restrictions before a candidate's name could be proposed for freedom, these shrewd legislators must have thought the defenses of their Puritan citadel were still reasonably well secured!

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[1] The administering of this oath was by charter optional. *Supra*, p. 8.

[2] Records, Vol. IV., Pt. II., pp. 117-18. See also *Ibid.*, p. 134.

The Commissioners were not slow in discovering that this law of 1664 was a mere evasion and far from meeting the King's requirement.[1] In their rejoinder to the General Court they say: "You have so tentered the King's qualifications as in making him only who payeth ten shillings to a single rate to be of competent estate that when the King shall be informed, as the truth is, that not one church-member in a hundred pays so much and that in a town of an hundred inhabitants scarce three such men are to be found, we fear the King will rather find himself deluded than satisfied with your late act."[2] "Yet if this rate were general, it would be just, but he that is a church-member, though he be a servant and pay not two pence, may be a freeman."[3]

The reply of the General Court to these well-founded complaints was characterized by artful dodging of the real points at issue. Every privilege attended with real profit they declared freely open to all without regard to their opinions or ecclesiastical practices; the law restricting to church-members the liberty of electing and being elected to offices had been repealed. That the law regulating the admission of freemen favored the bestowal of the franchise upon church-members having less estates than some that were not in church communion, they could not deny. But the rare advantages of "subjection to ecclesiastical authority,"—"the Lord accounting it among the choicest of all privileges that he bestows, and therefore may not be accounted a burden imposed by man,"—and of being freed from the burdens and responsibilities of offices, whose "retribution" did not make the holders objects of envy, were boldly put forward by the General Court as more than compensating the great majority of the men of Massachusetts for being under the control of

[1] For the King's instructions to the Commissioners see *Ibid.*, p. 192.

[2] Records, Vol. IV., Pt. II., p. 205. Palfrey (Vol. III., p. 41, n. 3) estimates that in 1670 there were from 1200 to 1300 freemen in Mass., or about one freeman to every four or five adult males.

[3] Hutchinson Collection, p. 418.

a government in which they had no voice![1] In the face of such stubborn resistance the Commissioners could accomplish nothing; their attempt to remove or greatly modify the religious test was a complete failure. Writing a dozen years later, Randolph declared that no person was "admitted to be a freeman of the colony or have vote in any election but church-members who are in full communion and approved by the General Court."[2]

In 1673 the barricade against dissenters was again strengthened. The two certificates from minister and selectmen seem to have proved ineffective in barring the admission of undesirable citizens, and it was now enacted that in future the names of candidates for admission to the franchise, "not being members of churches in full communion," should be propounded in some session of the General Court, but lie over until the next Court of Election before being put to vote.[3] The object of this act was doubtless not only to prevent hasty action, but also to secure upon each candidate the vote of the large numbers of freemen in addition to the assistants and deputies, who would then be present. A decade later, however, this law was repealed.[4]

A somewhat obscurely worded act of 1681 apparently broadened the franchise by admitting to full citizenship any town inhabitants who had proved their worth and ability by serving in local offices, such as those of constable, selectman or juror, to which they had been elected by their fellow-townsmen.[5]

The report of the Royal Commission gave little satisfaction to the King. Fortunately his attention was diverted, and for a number of years Massachusetts was suffered to

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[1] Records, Vol. IV., Pt. II., pp. 221-2.
[2] Hutchinson Collection, p. 477.
[3] Records, Vol. IV., Pt. II., p. 562.
[4] Records, Vol. V., p. 385, 1683.
[5] *Ibid.*, p. 307.

manage her own affairs. But Randolph was faithful in his odious duties as informer, and no overstepping of chartered powers did he fail to bring to the King's notice. As opposition to the colony was becoming ominous, in March, 1682, the General Court chose Dudley and Richards to act as agents for the colony. Among other things they were instructed to explain that in the matter of admission to the franchise the freemen of Massachusetts humbly conceived it was their liberty to choose whom they would admit into their own company; that this, however, had not been restrained to congregational men, but the admission of others in accordance with the King's letter had been provided for by the law of 1664, which had also repealed the restriction of freedom to church-members.[1] Two years later, further instructions were sent to the agents. Having repealed the law which required a year's probation after the candidate was propounded for freedom, the General Court now bade the agents make no alteration of the qualifications then required by law, "it being of the essentials in our charter to use our liberty with respect to freemen"; neither were they to consent to any change of the existing constitution of the General Court consisting of magistrates and deputies as the select representatives of the freemen; nor were they to yield to any infringement of their liberties in the matter of religion.[2]

This defense, however, proved unavailing. By a decree in chancery, June, 1684, the charter was cancelled and the colony became a royal possession. Death prevented the King's carrying out the plans he had formed for the government of his newly acquired province.[3] Upon the accession of James II. there was issued a proclamation bidding all officials throughout his dominions continue in the exercise of their duties until further orders should be received. On May 12, 1686, was held the last election nominally under the

[1] Records, Vol. V., pp. 346-7.

[2] *Ibid.*, p. 390.

[3] Feb. 6, 1685.

provisions of the old charter. Within a week from that date, commissioners arrived for the inauguration of the new régime. The government, extending over Massachusetts, Maine, New Hampshire and the King's Province, was to consist of a President, Deputy President, and sixteen Councilors. No General Court was to share their control, for the King had expressly rejected the proposal of a "House of Assembly." The Council's functions were merely executive and judicial; to make laws or to collect taxes except such as had already been levied by law was beyond their power.[1] May 20, 1686, under protest, the General Court gave up the government into the hands of the newly constituted authorities, and for the time being representative government was at an end. Early in June, President Dudley and his Council sent reports to England of the peaceful change of government; they called attention to the difficulty arising from the fact that many of the Councilors appointed by the King had refused to serve, and declared that it would be "much for His Majesty's service, and needful for the support of the government and prosperity of all these plantations to allow a well regulated Assembly to represent the people in making needful laws and levies."[2]

The government of Dudley and his associates was looked on as merely temporary, for within a month after the inauguration of the new rule there had been appointed a General Governor whose coming was constantly expected. In December, Sir Edmund Andros landed in Boston, bearing commission as Governor over the provinces which had been under Dudley's jurisdiction, and over Plymouth, in addition. The tyranny of Andros need not delay us long. The years of his rule, it goes without saying, saw no representative government, no broadening of the suffrage. By the vacating of the charter, the framework of self-government, which through half a century the colonists had been painfully erecting upon that slight foundation, was utterly swept

[1] Palfrey, Vol. III., p. 485.

[2] *Ibid.*, p. 495.

away. In place of their elective Governor and General Court of assistants and deputies of the people, there was rudely substituted an arbitrary Governor, commissioned by the King and ruling with the advice of a Council appointed and replenished by the Crown. Accustomed to exercising all the powers of self-government, "New England was asked to accept a system in which all taxation was modeled on ship-money, and all legislation on the exercise of the dispensing power."[1]

We are here concerned with only a few aspects of this short-lived tyranny. In May, 1686, the General Court, temporarily and under constraint, abdicated its power. As a protest against taxation without representation had heralded the birth of a representative Assembly, so now, half a century later, a sturdy resistance to the same act of oppression was to follow the death of the Assembly. In matters of legislation Andros moved slowly, but in the first act of his administration lay the germ of prolonged opposition. It provided that on warrant from the Treasurer, the constable of each town should summon a town-meeting for the election of a taxing commissioner, who should act with the selectmen in assessing upon the citizens the amount at which the town had been rated, the total amount of the tax being fixed by the Governor and Council.[2] In the summer of 1687 came the first order for the election of these commissioners. Not a few towns refused to choose any such officer. But it was Ipswich, perhaps at this time the second town in the colony in size and importance, that brought down upon herself the Governor's wrath by her outspoken protest against his arbitrary rule. In informal conference, some of the principal citizens decided that "it was not the town's duty any way to assist that ill method of raising money without a General Assembly." This opinion was vigorously presented in town-meeting the next day, and the town unanimously en-

[1] Doyle, Vol. II., p. 305.

[2] Connecticut Records, Vol. III., pp. 405-11.

dorsed and adopted it. Not content with this, they forthwith transmitted to the Governor and Council an announcement of their refusal to elect a commissioner, or to allow the selectmen to lay any rate until it should have been voted by a General Assembly in concurrence with the Governor and Council; they justified their action on the ground that the recent act providing for the election of a commissioner "infringed their liberty as free English subjects of his majesty, by interfering with the statute laws of the land, by which it was enacted that no taxes should be levied upon the subjects without the consent of an assembly chosen by the freeholders, for assessing the same."[1] Here again, as in 1632, the spirit of Magna Charta awoke among the New England colonists; again, as at Watertown, half a century before, it was the minister, the Reverend John Wise, who led his people in their struggle to maintain their threatened liberties. Resistance was hopeless. Wise and five of the principal inhabitants of Ipswich were seized, brought to Boston, thrust into jail, being denied the right of *habeas corpus*, and were presently brought to trial before judges among whom sat Joseph Dudley and Edward Randolph, and before a jury largely made up of "non-freeholders, strangers and foreigners." Conviction was of course easy when such pains had been taken to ensure it. Back to prison they were taken and there confined for a number of weeks before sentence was finally given. They were all disqualified from holding office, and Mr. Wise was suspended from the ministry; each man was obliged to pay a heavy fine in addition to costs, and to give bonds for good behavior.

Such rigorous measures the colonists could not resist. They were forced to submit, and the arbitrary taxes were raised without much further difficulty. But this experience had shown Andros where only he might expect to meet with resistance, and he was not slow in acting upon his discovery.

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[1] History of Ipswich, Hamilton and Essex, pp. 123-5, containing quotations from "The Revolution in New England Justified." Palfrey, Vol. III., pp. 525-9.

In the town-meetings he saw the nurseries of revolt, and forthwith a law was enacted forbidding that more than one town-meeting be held in a year, "upon any pretense or color whatsoever."[1]

News of the landing of the Prince of Orange in England had hardly reached Boston when a sudden uprising of the people seized the government and placed Andros and Dudley in jail. The leaders in this uprising formed themselves into a "Council for the Safety of the People and Conservation of the Peace." At their call, May 9, there met a convention made up of delegates, two from each town and four from Boston. This assembly was in favor of reviving the charter, and called upon the assistants, who had abdicated when Dudley assumed power, to resume their office, and with the delegates to constitute a General Court. To the assistants this seemed too bold a step. Another convention was called, and delegates appeared with definite instructions from their constituents. Of the fifty-four towns here represented, forty favored the revival of the charter, and the Governor and magistrates chosen in election of 1686 now consented to resume office. Thus when the order to proclaim King William and Queen Mary was received in Boston, the colonial government was running smoothly in the old charter ruts.[2]

In Plymouth the example of Massachusetts was followed. June 1 a General Court was held, and the government was organized in much the same form and with nearly the same officers as in 1686. Similar proceedings took place in Rhode Island and Connecticut, and "Again Englishmen were free and self-governed in the settlements of New England."[3]

For six months this government which the colonists had thus resurrected guided the affairs of Massachusetts before the colony was again brought into relation with the home government. In December there came to the octogenarian

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[1] March, 1688. Connecticut Records, Vol. III., p. 440.

[2] Records, Vol. VI., p. 50. [3] Palfrey, Vol. III., p. 598.

Governor a letter from the King authorizing the persons in office to continue the administration of the government until the receipt of further instructions. This was interpreted as authorizing the renewal of the old charter form of government, and during the next two years courts and elections were regularly held.

The government was recognized by all as purely provisional. Its acts might be reversed, and the government itself abolished whenever the King should have leisure to turn his attention to his colonies. It was a period of the greatest uncertainty. Meantime the agents of the colony in England were leaving nothing undone to secure the renewal of the charter. The King, the Queen, nobles and leaders in Parliament were importuned in behalf of the colony's lost liberties. In their anxiety to secure their old patent, the General Court, in February, 1690, anticipating any demand for religious toleration, granted modifications in the law respecting the admission of freemen which for three score years they had rigorously withstood. Not only was the property qualification reduced, but in place of a testimonial from the town minister to the candidate's religious character and orthodoxy, there was now accepted as sufficient a mere certificate from the selectmen to the effect that the man was "not vicious in life."[1]

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[1] Mass. Coll. Rec., *sub die.* Palfrey, Vol. IV., p. 26.

CHAPTER V.

Representation and Suffrage in the Plymouth Colony. 1620-1691.

The Plymouth colony never secured a charter. In the preamble to the book of laws it was declared that the enactments which were to follow were made by virtue of "a solemn and binding Combination, and also Letters Patent derivatory from His Majesty of England, our dread Sovereign, for the ordering of a body politic within the several limits of this Patent."[1]

Forced to plant the colony beyond the jurisdiction of the Virginia Company, from which body they held a patent, the Pilgrims found themselves cut loose from all established civil authority. Their patent gave them no rights or powers in New England, and they held no grant from the Crown. Their church organization could not serve as the basis for the civil government, for there were uncongenial "strangers" among them who owned no allegiance to the ecclesiastical authorities, and who were already boasting that as soon as they landed "they would use their own liberty, for none had power to command them."[2] It was under these circumstances that the Pilgrims drew up and signed the famous Mayflower Compact. This "solemne Combinacon," the first of the two constitutional documents upon which the Plymouth government rested, was primarily "a general acknowledgment of the authority of the whole community over each of its individual members."[3]

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[1] 1636. Plymouth Colony Records, Vol. XI., p. 6.

[2] Bradford, History of the Plymouth Plantation, p. 89. The Compact is given in the same connection.

[3] Doyle, The Puritan Colonies, Vol. I., p. 62.

As a first step toward the organization of government under this simple constitution, Mr. John Carver was chosen, "or rather, confirmed,"[1] their Governor for that year. No other officers were elected for some time, nor were the Governor's powers in any way defined, they "confiding in his prudence that he would not adventure upon any matter of moment without consent of the rest, or, at least, of such as were known to be wisest among them."[2] Legal standing was given to the new colony by the action of the London partners, in securing a patent from the Council for New England.[3] But not until after the dissolution of the partnership with these London capitalists were the colonists able to secure a patent directly from the Council for New England, granting to men resident in the colony powers of legislation, subject, however, to the usual condition that nothing should be enacted contrary to the laws of England, and limited also in favor of any form of government which the Council might choose to establish.[4] Attempts to secure a royal charter proved unavailing. The Plymouth settlers' only guarantee of legislative independence lay in the uncertain favor of the Crown, and in the forbearance of a commercial company that had little sympathy with their aims. Till the time of the final union with the colony of Massachusetts Bay, the Mayflower Compact and this patent of 1630 formed the constitutional foundation upon which the Plymouth government rested.

The first change in the form of the executive seems to have been made as a matter not of principle but of accommodation to peculiar circumstances. Early in the spring of 1621 Governor Carver died. In his place was chosen William Bradford, and "he being not yet recovered of his ill-

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[1] Bradford, p. 68. Carver was probably the Governor of the Mayflower, chosen in Southampton, "to order the people by the way."

[2] See Hutchinson, Vol. II., p. 457.

[3] May, 1621.

[4] Jan., 1630.

ness, in which he had been nigh the point of death, Isaac Allerton was chosen to be an assistant unto him."[1] Although elected simply because Bradford would otherwise have been "unable to bear the whole burden,"[2] this choice of an assistant served as a precedent. The same Governor and assistant were chosen yearly until 1624, when, the numbers having increased, and the administration of affairs having become more complicated, Governor Bradford, at the annual election, urged the voters "to change the persons as well as renew the elections; and to add more assistants to the Governor for help and counsel, and the better carrying on of affairs," arguing that if office-holding were an honor, then more should be made partakers of it, while if, as he thought, it were a burden, more should help bear it. Accordingly, instead of a single assistant, five were chosen, the Governor being given "a duble voyce."[3] A few years later, the number of assistants was raised to seven.[4]

For nearly twenty years the simple constitutional machinery of Plymouth underwent little change. Executive and ordinary judicial power were in the hands of the Court, or Bench, consisting of the Governor and seven assistants, elected annually by the whole assembly of freemen. The real law-making was done in primary assembly, in which only freemen were allowed to vote. This folkmoot was also the supreme judicial body.

That the primitive market democracy sufficed in Plymouth for nearly a score of years was a corollary of the slow growth of the settlement.[5] With the rise of new townships[6] came the necessity for some system of government by delegated authority; but the development of the representative body

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[1] Bradford, p. 101.

[2] Hutchinson, II., 65.

[3] Bradford, p. 156.

[4] 1633. Hutch., Vol. II., p. 465.

[5] In 1624 there were but 180 inhabitants, Smith's "Gen. Hist.," p. 247. In 1626 this number had not doubled. See patent of 1629, in Hazard, Vol. I., p. 300.

[6] Duxbury and Scituate. Plymouth town, first distinguished from the colony, Oct. 28, 1633. Ply. Town Rec., Introd., p. x.

was very gradual. The idea of representation in politics was made familiar to the settlers by the example of Massachusetts, and also by a favorable experience of its workings in another field. At the General Court held in October, 1636, it was ordered that four delegates for the town of Plymouth, and two each for Duxbury and Scituate, should be added to the Governor and assistants, as "Comittees for the whole body of this Comonweale," to revise and codify the colonial laws.[1] By this representative commission the existing division of powers between the magistrates and the General Court was confirmed, and there was formulated a code of laws wich gave satisfaction for many years.[2] But although attendance at the General Assembly was becoming very difficult[3] for the scattered settlers, and although this favorable experience with the work of delegates was fresh in their minds, the men of Plymouth were not such innovators as to institute straightway a full-fledged system of representative government. They went about it piece-meal. While the deputies were revising and compiling the laws, important changes were being made in the organization of the General Courts. The first Tuesday in June was set apart as the day upon which should occur the annual election[4] of colonial officers. Fair warning was to be given the freemen by the constable, "either to make their personall apeerance att the Courts of Election or to send their voates by proxy for the choice of officers."[5] The legislative Assemblies, however,

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[1] Rec., Vol. XI., p. 6.

[2] One of the most interesting of these laws, in the present connection, was that which required that the laws and ordinances for the government of the colony "be made onely by ffreemen of the Corporacon & no other." Rec., Vol. XI., p. 11.

[3] Evidenced by the necessity of imposing a fine, 3*s*., for non-appearance at the annual election, or for leaving the Court without permission before its dismissal. Rec., Vol. XI., pp. 10, 13.

[4] Records, Vol. XI., p. 10, and p. 80.

[5] As later developed, proxy voting took this form: in each town the deputies gave notice in the same town-meeting in which they were chosen, that those freemen who did not mean to attend the

all the freemen were still expected to attend. That some form of delegated government was a necessity is shown from the fact that in 1638 sixteen freemen were fined for absence from the Assembly.[1]

In Massachusetts, as has been seen, the General Court had already become a truly representative body, yet the change had appeared of so little importance that the process by which it was accomplished finds no mention in contemporary records.[2] In Plymouth, however, the last step toward a complete representative system was definitely and consciously taken in the law of March, 1638, which enacted: "That every town shall make choice of two of their freemen and the town of Plymouth of four to be Committees, or Deputies, to join with the Bench to enact and make all such ordinances as shall be judged to be good and wholesome for the whole."[3] The laws made by this representative legislature, however, in case they should "prove prejudicial to the whole," might be repealed by the freemen at the next Court of Election. Thus for a time the folkmoot continued to be in theory the supreme legislative body, but in practice lawmaking was soon in the hands of the representative Assembly, composed of Governor, assistants and deputies.[4] This

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General Court of Election in person might then "giue in theire voates Sealed vp for the chosing of Gou'r Assistants Commissioners and Treasurer." These secret ballots, or "proxies," were immediately sealed up in a parcel together. 1641, Records, Vol. XI., p. 81. In the Court of Election the order of procedure was that "the voates of all the ffreemen present bee first read and Next after them the deputies of the seuerall townes shall orderly present the proxey of theire owne towne." 1658, Records, Vol. XI., p. 81.

[1] Records, Vol. I., p. 104. [2] 1634. *Supra*, pp. 21 and 22.

[3] Records, Vol. XI., p. 31. At the time of the passing of this law there were but three towns; before the next General Court, four more had been incorporated. Baylies, p. 298.

[4] In 1646, Records, Vol. XI., p. 54, on complaint of the deputies at the burden of attending three courts in a year, it was ordered that the whole body of freemen should appear yearly in the June court, to make and repeal necessary laws. They should at that time present the deputies whom they had chosen, and these

smaller body received formal recognition as the regular legislative Assembly in the act passed in September, 1658, intended to summarize and interpret previous laws upon this matter. It provided "that fit and able persons be annually chosen out of the freemen to attend June Courts and the several adjournments thereof, by the approved inhabitants qualified as in such case is provided of this Jurisdiction, in their respective townships, for deputies, unto whom with the magistrates, as the body Representative, is committed full power for the making and repealing of all laws as upon their serious considerations they shall find meet for the public weal of this Jurisdiction, and that then only such laws be enacted or repealed, except the Governor for the time being shall see weighty and necessary cause, by the complaint of the freemen or otherwise, to call a special Court, either of the whole body of the freemen or their deputies."[1] By this law there was given to the representative machinery of Plymouth definite form which was not materially altered during the subsequent history of the colony. The changes which did take place were in the basis of representation. To understand them it will be necessary to trace the development of the two ranks of citizens, inhabitants and freemen.

Who, then, were the "approved inhabitants, qualified as in such case is provided of this Jurisdiction"? It might be thought that the hardships of life at Plymouth and the aus-

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should attend the adjournments of this June court, to which all law-making was to be confined. The other two courts being reserved for matters of judicature only, the deputies were not required to attend them. The transition from a primary to a representative assembly was not complete for a number of years; meantime, the two were combined by various compromises. In 1657 (June 3, Records, Vol. III., p. 165) "the whole body of the freemen personally appeared and enacted sundry laws." Two years later (Records, Vol. III., p. 174) the question having been submitted to the towns whether all the freemen should be summoned to the next June court, sixty-three votes were recorded in favor of, and one hundred and eleven against such a summons.

[1] Records, Vol. XI., p. 155.

terity of the Pilgrims' manners would have been a sufficient protection to them against the coming of uncongenial neighbors. But it must be remembered that the Pilgrims had been obliged to make unto themselves friends of the mammon of unrighteousness in the persons of certain London capitalists and adventurers whose motives were far different from those of the Leyden congregation. Even in the Mayflower the Pilgrim found lawless companions. Having left Holland principally to escape influences which they judged corrupting to themselves and to their children, it was but natural that, as domination from their London partners ceased, the Plymouth settlers should take measures to secure against corruption by strangers that manner of life and those forms of government which they had braved the ocean and tamed the wilderness to gain for their posterity.[1]

Among the earliest laws was one providing that "no person or persons hereafter shall be admitted to live and inhabite within the government of New Plymouth without the leave and liking of the Governor or two of the assistants at least."[2] Where especial caution seemed necessary, the central authority did not hesitate, in exercising that far-reaching superintendence so much more prominent in Plymouth than in the other colonies, to step in and prescribe special conditions

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[1] Bradford, pp. 22-4. An amusing instance of Pilgrim exclusiveness is given in Bradford, pp. 217-21. "They packed him away and those that belonged unto him by the first opportunity, and dismissed all the rest as soon as could, being many untoward people amongst them."

[2] Mar. 7, 1636. Records, Vol. XI., p. 26. Perhaps of still earlier date is the provision, Records, Vol. XI., p. 17, that none should be allowed to be house-keepers, or to build any house, until allowed by the Governor or some assistant.

In 1638, in its commission to those who were about to found a new town, the General Court conferred upon them two powers: they were enabled to dispose of the lands within their limits, and they were required to be "conscionably faythfull, & carefull to receive in peacable & faythfull people according to their best discerneing," etc. Ply. Rec., Vol. I., p. 113.

of approval by the church.[1] In 1642, a quiet and unchallenged residence of three months within a township was made to constitute a man an inhabitant of that place.[2] Two years later, however, this law was declared to be applicable only to "poor persons," and no mere length of residence was to constitute a man an inhabitant who should refuse to take the Oath of Fidelity.[3] But as a result of a few years' experience of even this degree of laxity it was found that many persons "are crept into some townships of this Jurisdiction which are and may be a great disturbance of our more peaceable proceedings."[4] It was therefore thought best to reenact "that ancient and wholsome order" which required the approval of the Governor or two of the assistants. Any who would not approve themselves so as to procure this

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[1] The town of Sandwich seems to have been especially troublesome, so that (Oct. 3, 1639) the General Court, "for the redress of the negligence of the committees in receiving into the town many inhabitants that are not fit for church society, and for the preventing of like evil for ensuing time," ordered that in future none should be admitted as inhabitants to that town without the consent and approbation of the pastor and of the church first had and obtained, and forbade the sale of land to any except such as were generally approved by the whole town. Records, Vol. I., p. 134. Twenty years later (Oct. 2, 1658) unruly Sandwich again required attention. The provisions of the previous order had not been carried out, and the court now disqualified several men by name, because of non-legal admittance as inhabitants, from acting in any town meeting, or claiming "title or interest into any town privileges as towns men." This was to apply to all others whose admittance had not been legal. Again the approval of the church together with that of the Governor or one of the assistants was insisted upon as a pre-requisite to the granting of freedom. Records, Vol. III., p. 153.

By a law passed in Mar. 1642, any one who, "without consent and assent of the Townesmen in lawfull generall publike meeting," should bring into town persons who were liable to become a charge to the town, was made responsible for them. Records, Vol. XI., p. 40.

[2] Records, Vol. XI., p. 40.

[3] Aug. 22, 1644. Records, Vol. XI., p. 44. The Oath of Fidelity is printed in Records, Vol. XI., p. 9.

[4] 1658. Records, Vol. XI., p. 118.

were to be warned to depart the colony, or be dealt with according to the discretion of the court. Nor did time seem to relax this exclusiveness toward strangers of doubtful opinions. As late as 1675 we find it enacted, "for the preventing of profaneness increasing in the colony which is so provoking to God, and threatening to bring judgments upon us," that persons who should "at any time intrude themselves to inhabit any where within this colony" without obtaining leave, should be warned out of the colony, and fined five shillings a week if they did not speedily heed the warning, "hopeing the Court wilbe carefull; that whom they accept off; are persons orthodox in their Judgments."[1]

Before the beginnings of representation in Plymouth, apparently only freemen were allowed to attend the Assembly or have any voice in the government. But as new towns sprang up, regularly qualified inhabitants had an equal vote with freemen in purely local affairs and were occasionally chosen to fill minor town offices.[2] The first broadening of this suffrage seems to have taken place in 1638, when the representative Assembly was instituted. Even then only freemen could vote in the election of Governor and assistants; but in the choice of deputies, since the charges were to be borne by freemen and non-freemen alike, the privilege of voting was given to "such as were not freemen but had taken the Oath of Fidelity and were masters of families and inhabitants of said towns provided they chose them only of

[1] Records, Vol. XI., p. 248 and p. 57. For an interesting discussion as to who were the inhabitants or "Townsmen" of Plymouth town, see Plymouth Town Records, pp. 90, 107-8, 138.

[2] Records, Vol. XI., p. 143, 1665. In each town three or five Selectmen were to be chosen by the *townsmen* out of the *freemen*. The town of Plymouth had its selectmen since 1649. (Town Records, pp. 29-30.) Men chosen to this office who refused to serve were fined 20*s*., one half to the town, the other to the use of the colony, and the Governor appointed a man to fill the vacancy. 1670, Records, Vol. XI., p. 227. After 1681, selectmen of the various towns took their oath of office in the General Court. Records, Vol. XI., p. 252.

the freemen of the said town whereof they were."[1] This vote of equal value with that of the freemen in the election of deputies gave the inhabitants no small influence over legislation. In many towns the number of inhabitants was doubtless greater than that of the freemen, so that, in case of any difference of interest, the deputy chosen, though himself a freeman, would be one who would voice the sentiments of the inhabitants.[2] In 1669 the franchise was narrowed by imposing a property qualification upon inhabitants; "none should vote in town meetings but freemen or freeholders of twenty pound ratable estate and of good conversation having taken the oath of fidelity."[3] A few years later the final step was taken; "as some do abuse their liberty," it was ordered that voting in town-meetings be confined to freemen.[4]

In the "Pilgrim Republic," as in the other colonies, "the freemen were the fountain of power."[5] To be sure, the in-

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[1] Records, Vol. XI., p. 31.

[2] This was probably the difficulty which it was sought to obviate, twenty years later. (1658, Records., Vol. XI., p. 169.) Observing that "by weakness, prejudice or otherwise it hath or may come to pass that very unfit and unworthy persons may be chosen, that cannot answer the Court's trust in such a place," each Court, upon assembling, was ordered "in the first place to take notice of their members," and if any unfit for such a trust should be found, "that they and the reason thereof be returned to the town from whence they were sent, that they may make choice of more fit and able persons to send in their stead as the time will permit." In 1667 there was passed an act permitting the town of Sandwich, "in regard of theire scarcitie of men fit for publicke imployment," to send but one deputy to the General Courts. Records, Vol. IV., p. 157.

[3] July, 1669. Records, Vol. XI., p. 223. Baylies misquotes this statute and makes the property qualification apply to freemen as well as to others. The proper reading of the law, and consistency with other Plymouth legislation as well as with Massachusetts precedent (Records of Mass., Vol. IV., Pt. II., pp. 117-8) would seem to limit the requirement of a property qualification to freeholders. G. W. Chase (Hist. of Haverhill, p. 115) discusses the distinction between "freeholders" and "freemen."

[4] 1671, according to J. A. Goodwin, The Pilgrim Republic, p. 405. The writer has looked in vain for the original authority for this statement.

habitants might vote in town-meetings on local affairs; might, as in Connecticut, take part in the election of deputies to the General Court, and might share in nominating assistants.[1] None but freemen, however, could vote in the choice of colonial officers, and only from the ranks of the freemen could Governor, assistants and deputies be chosen, and consequently freemen alone (though, in the case of deputies, representing freemen and inhabitants alike) made and administered the laws.

The original freemen, or "those who were free of the Corporation," were the partners who, with the financial backing of London capitalists, came to America to found their little community of Independents. The great majority of them were members of the old Leyden congregation. But not all the men in the cabin of the Mayflower, nor yet all the signers of the Compact, were freemen; of that number, two were servants.[2] The annual Court of Election was the regular place where candidates were admitted to their freedom by vote of those who already possessed a freeman's privileges and interest in the government. Each candidate had to take the freeman's oath, which, unlike that of Massachusetts, pledged loyalty to the king and government of England, as well as to the colonial government.[3] In 1656 a further safeguard was placed upon the admission of freemen by the requirement that the name of each candidate for freedom should be propounded in the General Court by the deputy from his

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[1] But though each town might send up to the Court of Elections the name of one person who was judged meet to be an assistant, in the election of these magistrates, "the cuntrey" was not restricted to the list of candidates thus made up. June, 1651. Records, Vol. XI., p. 58.

[2] It has been inferred that all able-bodied male passengers upon the Mayflower were invited, or, perhaps, compelled, to sign this document. Mourt's "Relation," edited by H. M. Dexter, p. 7, note. Mr. J. A. Goodwin, however, shows reasons for thinking that the word "servant" was here used with a very extended meaning, equivalent to "secretary," or "general man-of-affairs." The Pilgrim Republic, p. 59.

[3] The freeman's oath is given, Records, Vol. XI., p. 8.

town; no name was to be presented unless it had already secured the approval of a majority of the freemen there resident.[1] Two years later there is seen a sudden change in policy, due, without doubt, to fear that the much-dreaded Quakers, who had just begun their witness-bearing career in New England, might in some way insinuate their hated views into the government. It was enacted that all candidates for admission as freemen should stand for one whole year and then be admitted if the court should see no cause to the contrary.[2] No mention of any relaxation of these restrictions is to be found in the colonial records. Nearly twenty years later a further precaution was taken in insisting that the approval of a candidate's name "be signified to the Court under the town clerk's hand."[3]

No small credit is due the Pilgrim colony for the fact that church-membership was not there, as in Massachusetts and New Haven, specially insisted upon as an essential qualification for citizenship.[4] But this is not equivalent to saying that in practice candidates for freedom of the colony had to stand no religious test. Though Puritan and Baptist, Episcopalian and Presbyterian were welcome in Plymouth, church attendance was compulsory under penalty of a fine, or public whipping,[5] and attendance at churches or meeting places not approved by the government was punishable by suspension

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[1] Records, Vol. XI., p. 65. The next year, 1657, this law was interpreted as meaning that the candidate should be admitted at the same court in which this testimony was given. Records, Vol. XI., p. 68.

Though mainly exclusive in its action, it is quite possible that favored inhabitants in exceptionally liberal towns may have secured freedom, who, but for this recommendation of their "free" neighbors, could not have gained the franchise. Thus in 1665 Rehoboth voted to confer citizenship upon "Sam, the Indian that keeps the cows,"—"the only case recorded in the colony of extending freemanship to one of that race." The Pilgrim Republic, p. 514.

[2] 1658. Records, Vol. XI., p. 79. [3] *Ibid.*, p. 236.

[4] The writer finds no authority whatever for Mr. Deane's statement, Hist. of Scituate, p. 97.

[5] Records, Vol. XI., p. 58.

from having any voice in town-meeting and further penalties at the discretion of the court.[1]

It should be remembered that even for admission to the very incomplete citizenship enjoyed by inhabitants, by one of her later acts, Plymouth charged the court to be careful "that such as were admitted be persons orthodox in their judgments,"[2] and that in special cases she had not hesitated to demand approval by church and pastor as a pre-requisite to admission as an inhabitant.[3] When the austere and exclusive character of the first freemen is considered, and that, before admission to that rank, the candidate must be approved by the majority of his "free" neighbors who were sure to regard church-membership as the natural concomitant of the character they deemed requisite in a citizen, it may well be doubted whether a man holding views of questionable orthodoxy would have secured citizenship. The year 1658 was memorable for the passing of a series of statutes most of which are plainly to be associated with the recent advent of the Quakers. All who should refuse to take the oath of fidelity, and "such as were manifest encouragers of such," were to be given "noe voyce" in the election of public officers, and were to be excluded from any and all positions of public trust. No "Quaker Rantor or any such corrupt person," and none that were "opposers of the good and wholesome laws of this colony, or manifest opposers of the true worship of God, or that refused to do the country service," were to be admitted to freedom.[4] It was not enough to provide for the future; the ranks of those who were already freemen had to be purged; all were to lose their freedom who were Quakers or manifest encouragers of them,

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[1] Records, Vol. XI., p. 57.

[2] See *supra*, p. 74.

[3] In the admission of inhabitants and freemen the clergy must often have exercised the power of censors. But the uniting of civil and ecclesiastical authority in one person seems to have been avoided. A singular instance appears in the records where an assistant, "having been chosen deacon in the church, was at the request of the church and himself, freed from the office of an assistant in the commonweale."

[4] Records, Vol. XI., p. 177.

and "such as shall speake contemptuously of the Court & of the lawes therof, and such as are judged by the Court grosly Scandalous, as lyers drunkards swearers &c."[1]

Notwithstanding the absence of the formal religious test in Plymouth, the ratio of voters was greater by one-half in Massachusetts than in the older colony.[2] But for this, Pilgrim exclusiveness was not the only cause. In Massachusetts, political feeling ran high; even Winthrop was more than once squarely defeated. But in Plymouth partisanship and class feeling played no important rôle in politics; no disputed election of a Governor appears in the records. The increased privileges of full citizenship were accompanied by increased duties and burdens. A freeman must appear promptly at the Court of Election, either in person or by proxy, and remain there until dismissed.[3] If chosen selectman, he must serve.[4] If elected deputy, he must attend court promptly and regularly.[5] To the many who were then, as at the present day, indifferent to matters of government, the irksomeness of the duties required under the compulsion of a fine must have had more weight than the attractiveness of sharing directly in the government.[6]

In the sources of Plymouth history there is singularly little concerning the method of elections. In the code of 1636 it

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[1] *Ibid.* Interesting instances of disfranchisement under this act, both of Quakers and their abettors, and also of men "grosly Scandalous," are cited, Records, Vol. III., pp. 167 and 176. 1656, William Nicarson was "disfranchised his freedom" for selling a boat to the Indians, contrary to a Court warrant; Records, Vol. III., p. 101. Captain Cudworth (1663, Records, Vol. III., p. 189) was disfranchised, "being found a manifest opposer of the laws of the government as appears by sundry expressions in a letter directed by him to the Governor, & otherwise."

[2] J. A. Goodwin, "The Pilgrim Republic," p. 415.

[3] Or be fined 3*s*. (Records, Vol. XI., pp. 10 and 13), 10*s*. (Records, Vol. XI., p. 84).

[4] Penalty of refusal, 20*s*. (Records, Vol. XI., p. 227).

[5] Penalty, 20*s*. (Records, Vol. XI., pp. 54 and 227.) Refusal to serve as Assistant or Governor met with a fine of £10 and £20, respectively. (Records, Vol. XI., p. 10, pp. 51, 212, 218.)

[6] *Supra*, p. 51. The remuneration of assistants and deputies was very small, so that this in itself could not have offered much at-

was declared that the election of Governor and assistants should be made "only by freemen, according to former custom."[1] Later it is incidentally mentioned that the election of assistants was by ballot.[2]

One striking difference in the organization of representative government in Massachusetts and in Plymouth was that the Plymouth legislature conducted all its business as a single body, never splitting into separate houses of assistants and deputies.[3] The Governor presided, and decisions were by a majority vote of the whole body. This uni-cameral General Court was never so large as to become unwieldy, and no serious difficulty seems to have been encountered

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traction. £10 and table charges were the salary of an assistant. (1665, Records, Vol. XI., p. 212, repealed July 5, 1667. See also p. 219, where £50 is appropriated for the whole board of assistants.) In the first of these statutes only the re-elected assistants were to receive pay, the others having their table charges only, and taking the rest of their compensation in honor. The charges of the deputies were borne by the towns sending them, and may have varied, though a note in the margin of the record opposite the clause placing the charge upon the towns reads "2*s.* 6*d.* a day." (Records, Vol. XI., p. 91, 1638.) In Bradford's time the Governor usually received no salary. (Goodwin, p. 455, note.) In later years, small salaries, sometimes reaching £40 and £50, were granted. Records, Vol. XI., pp. 33 and 212.

[1] Records, Vol. XI., p. 7.

[2] Mar. 5, 1643. Records, Vol. XI., p. 42. A law providing for the election of assessors ordered that in every town three or four men be chosen "by writing their names in papers (as the magistrates are chosen.)" See also Records, Vol. XI., p. 157, where the votes of all the freemen present at the Court of Election were to be read before the proxies. The most recent view of the origin and history of the written ballot may be found in Campbell, Vol. I., p. 50, Vol. II., pp. 430-6. The written ballot had already been used in the Salem church election of a minister in 1629, and in Massachusetts elections of Governor and Deputies since 1634. *Supra*, p. 21, note 2, and p. 29. The exact date of its introduction into Plymouth it is impossible to determine. There was less need of it here because of the quietness of Plymouth politics, but it is quite probable that it was in use in Plymouth as early as in Massachusetts, and even earlier, if the view be correct that New England colonists obtained their knowledge of the use of the ballot from the Dutch.

[3] *Supra*, p. 44.

from the constitution of the Assembly.[1] There is no record of any violent controversy between the assistants and deputies, for the reason that they did not, as was the tendency in Massachusetts, represent respectively a "gentry" and a "generality." In 1650 there was some agitation in favor of dividing the house, but it came to nothing.[2] Another respect in which the General Court of Plymouth differed from those of Massachusetts and Connecticut was the far-reaching control which this central representative body exercised over the minor divisions of the colony. By law of 1658 it was provided that at the General Court of Election, constables, grand-jurymen and highway surveyors should present themselves for confirmation, if approved by the court;[3] while by a later law the choice of selectmen was to be under warrant from the General Court, sent down to the several towns, and at the Court of Election the selectmen thus chosen were to be sworn into office.[4]

During the period from 1686 to 1689 Plymouth was united with the other New England colonies under the arbitary rule of Andros. Self-government was for the time suspended, being replaced by the rule of the Council. After the fall of this hated régime, the colonies, which had been forced into union against their will, straightway resumed their self-government, independent of one another. Conscious of the uncertain tenure upon which she held her self-rule, Plymouth made strenuous but unavailing efforts to obtain an independent charter from the Crown. In 1691 Plymouth was united to Massachusetts, and from that time the constitutional development of the "Old Colony" was merged in that of her more prosperous and aggressive neighbor.

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[1] To the last General Court of Plymouth, June 2, 1692, were sent 27 deputies, four towns sending none; six assistants were present.

[2] Records, Vol. XI., p. 57. The question of separation had been discussed at the preceding court. It was now decided that "magistrates and committees or deputies be considered together as one body."

[3] Records, Vol. XI., p. 157.

[4] *Ibid.*, p. 252, 1680

CHAPTER VI.

Changes introduced by the Charter of 1691.

Opposition to French aggression was the key-note of King William's colonial policy. To make this effectual in America, the colonies must be consolidated and brought into vital connection with the English government. They must be welded into a weapon, to be used as the Crown should determine; yet this must be so done as not to arouse the antagonism of the colonists, else the edge of this weapon would be dulled. This motive may be read between the lines of the charter of 1691.[1] By this instrument was erected the "Province of Massachusetts Bay," which incorporated with Massachusetts not only her old Maine dependency but also the colony of New Plymouth.

The form of government was not much changed. It was to consist of a Governor, Council, and a House of Representatives elected by the freemen of the towns. But these names had not their old meanings. The Governor, Lieutenant-Governor, and Secretary were no longer elected by the people, but appointed by the King, and these officers, in turn, appointed the judiciary. To the Governor, the King's deputy, was given a veto upon all acts of the General Court, and any act, though approved by the Governor, might at any time within three years of its passage be set aside by the Crown. The Council, corresponding to the old board of assistants, was to consist of twenty-eight members, seven constituting a quorum. Those for the first year were nominated by the King, but thereafter they were annually elected by the General Court, subject to the Governor's negative.

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[1] The charter is printed in Provincial Laws of Mass., Vol. I.

They were not necessarily freeholders. Something of district representation was secured to the body by establishing the minimum number of members that should be chosen from each section of the province: eighteen from Massachusetts, four from Plymouth, three from Maine, and one from the newly acquired Acadia. The House of Representatives was elected annually by the freemen of the towns; its members were required to be freeholders. Each town sent two representatives to the first General Court, and there the apportionment for the future was determined. To the representatives of the freemen was given the entire power of the purse, and by this act was apparently excluded arbitrary taxation by the Governor.

Not only was the machinery of government remodeled, but also radical changes were made in the basis of citizenship. To all except Papists entire liberty of conscience was given, and from this it followed as a corollary that the religious test which for three score years had kept three-fourths of the male adults from the ballot-box was entirely swept away. To men of Endicott's type this must have seemed like undermining the very foundations of government. But thoughtful men who were in the least emancipated from narrow Puritan prejudice must have seen in this, "the peaceful removal of a system which the community had outgrown. In the past it might have been a necessity; in the future it could be only a source of disunion and danger."[1] To the thousands who by this act were enfranchised it came as a long-deferred act of justice. In place of the odious religious test was substituted a simple and uniform property qualification; a freehold estate worth £2 a year, or £40 in personality brought with it the franchise.

The new charter was well calculated to carry out the King's policy. Dependence upon the Crown was ensured by the King's retaining the appointment of the highest officers and a veto upon all the legislative acts of the General Court. On

[1] Doyle, Vol. II., p. 375.

the other hand, if the liberties of the colonists were curtailed, those that remained were more firmly grounded than under the old charter. Definite statement replaced construction and implication as the basis upon which their claims rested. Except that the councillors might be disallowed by the Governor, representation was as fair and liberal as before, while the basis of the suffrage was generously broadened.[1]

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[1] Provincial Laws, Vol. I., pp. 1-20. Hutchinson, Vol. II., p. 8; Vol. III., p. 84. Barry, History of Mass., Vol. I., pp. 513-14; Vol. II., Introduction, and pp. 16-18. Lodge, pp. 361 and 412. Doyle, Vol. II., pp. 372-6. Palfrey, Vol. IV., p. 76.

APPENDIX A.

Disfranchisement.

To consider only the conditions by which admission to the franchise might be gained is to look at but one side of the shield. The Puritan leaders in Massachusetts never considered freedom an irrevocable gift. The freeman or the town that should be remiss in fulfilling public obligations had to stand in fear of disfranchisement.[1]

In the early days while the government, still unsettled, was vexed by various heresies and threatened by political attacks, it is not unnatural that loss of citizenship should have been the penalty for denying the power of magistrates, for petitioning in favor of heretical leaders, and even for "common railing."[2] In 1635, Endicott's anti-Papist zeal in defacing the English flag forced the General Court to "censure him to be sadly admonished of his offense," and to be "disinabled for bearing any office in the commonwealth for the space of a year."[3] For repeated drunkenness, and for "any other shameful and vicious crime by a freeman," the courts which should try the case were given power at their discretion to add disfranchisement to any other penalty imposed.[4] It was doubtless that strange fear of the Quakers which led in 1663 to the passage of the most far-reaching act of disfranchisement, decreeing that "all persons, Quakers and others, which refuse to attend upon the public worship of God established here,. . . whether freemen or others,. . . shall and hereby are made incapable of voting in all civil assem-

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[1] *Supra*, p. 38.

[2] Records, Vol. I., pp. 136, 175, 207, 267.

[3] Records, Vol. I., p. 146.

[4] Records, Vol. I., pp. 112, 118, 139; Vol. IV., Pt. II., p. 143.

blies during their obstinate persisting in such wicked ways and courses, and until certificate be given of their reformation."[1] In the years which followed the futile labors of the Royal Commission, Massachusetts seemed willing to conciliate the King by unusual severity toward those who spoke of him without due respect. Thus, Wm. Stevens, for "speaking against His Majesty, our Sovereign Lord and King, Charles II.," was "disfranchised from being a freeman, and from holding any office during the Court's pleasure, and to pay £20 fine and costs of trial, and to be imprisoned one year."[2] A curious case of disfranchisement occurred in 1680, when the court decided that as an inhabitant of Salem was a "factious, litigous townsman," he should have no case before any civil judicature, sustain no office, and have no vote in town affairs during the pleasure of court.[3]

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[1] 1663, Records, Vol. IV., Pt. II., pp. 37-8.

[2] 1667, Quarter Court Records, quoted in History of Ipswich, Essex and Hamilton, p. 122.

[3] Annals of Salem, p. 265.

APPENDIX B.

The Confederation of 1643.[1]

Schemes of federation had been discussed by Massachusetts and Connecticut for at least five years before these two joined with Plymouth and New Haven in forming the United Colonies of New England. In 1643 both safety and expediency favored the formation of this league. The Civil War was waging fiercely in England, so that in case of attack the colonies could not look to the mother country for protection; they must be prepared to defend themselves. Again, the English government was then too much pre-occupied to notice this action of the colonies, which at any other time would surely not have passed unchallenged. The Maine colony was excluded from this league, "because they ran a different course from us both in their ministry and civil administration,"[2] while the Rhode Island plantations were repeatedly refused admission unless they would put themselves under the jurisdiction of one of the other colonies.

The sixth of the articles agreed upon in 1643 as the constitutional basis of the Confederation gave into the hands of eight commissioners the managing and concluding of all affairs which concerned the whole league. The bigotry of

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[1] Full of interest as is this first experiment in colonial federation, its connection with the subject of this paper is but slight. The materials for an extended study of this topic are: Acts of the Commissioners of the United Colonies, printed in Vols. IX. and X. of Plymouth Colony Records. Records of Mass., especially Vol. II., pp. 31, 35-6, 69-70. Winthrop, Vol. II., pp. 119-27. Bradford, pp. 257-60. Doyle, Vol. I., Cp. VIII., contains a valuable treatment of the whole subject. Goodwin, "The Pilgrim Republic," Cp. LI.

[2] Winthrop, Vol. II., p. 121.

Massachusetts and of New Haven found expression in the only qualification insisted on in these commissioners,—that they should "all be in church fellowship with us."[1] Upon this board the four colonies were given equal representation. The agreement of six of the eight should be sufficient to determine any question; in case of the failure of six to agree, the matter with a record of the arguments was to be submitted to the General Courts of the four colonies. The commissioners were to meet annually, the capital of each colony having its session in turn.

The Confederation was from the first "little more than a committee of safety." Its chief benefits doubtless were that it established a precedent for more thoroughgoing unions in the future, and that in this time of danger it enabled the colonies to present to their enemies, Dutch, French and Indian, a seemingly united front, where in fact there was little real union.

The great source of weakness in the Confederation was the equality of representation given to colonies of very unequal strength. Of an aggregate population of twenty-four thousand in the four colonies, Massachusetts contained fifteen thousand, while the other members had not more than three thousand each.[2] Possessing, thus, nearly two-thirds of the population within the limits of the confederated colonies, Massachusetts had to bear by far the heaviest burden both in taxes and military levies.[3] It is not strange, therefore, that Massachusetts proved an unruly member, and that, deprived of influence in proportion to her strength and burdens by the equality of representation, she was constantly trying in

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[1] Neither Plymouth nor Connecticut made church-membership a test of citizenship. Connecticut required that test only from her Governor.

[2] Thwaites, "The Colonies," p. 157.

[3] These were assessed in proportion to the number of able-bodied men between the ages of sixteen and sixty. In the first levy Massachusetts furnished 150 men, Plymouth 30, Conn. 30, New Haven 25. Acts of United Colonies.

other ways to assert her pre-eminence.[1] Repeated instances of controversies with Massachusetts appear upon the records; she demanded representation in proportion to population, claimed for one of her commissioners the presidency of the board, insisted that her members should have precedence, and that the greater number of the meetings should be held at Boston.[2]

Another most serious defect was that the dealings of the commissioners were only with the General Courts in the several colonies. As in the Confederation of 1781, the central body could exercise no power directly upon individuals, and had no means of coercing the independent colonial governments. The consequence was that Massachusetts repeatedly refused to be bound by the decision of six of the commissioners.[3] Despite the constitutional pledge of compliance with such decisions, she now insisted upon "State rights," with a stubbornness which two centuries later seemed to her incomprehensible.[4]

Though changing somewhat in form, this Confederation

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[1] An interesting parallel is afforded by ancient Greek experience. "The equal voice accorded to large and small tribes alike in the votes of the Amphictyonic Council speedily robbed its conclusions of binding force in even the international politics of the states concerned. The powerful members of the Amphictyony naturally would not heed the dictation of its insignificant members." Woodrow Wilson, "The State," p. 81.

[2] The empty honor of signing next after the president was conceded to the Massachusetts commissioners. Acts of U. C., Vol. I., p. 17.

[3] It is interesting to notice that in 1638 Massachusetts proposed a scheme of federation in accordance with which the majority of the commissioners should have absolute power to determine any matter of difference, and that the scheme came to naught because Connecticut refused to be bound by majority rule. Winthrop, Vol. I., p. 342.

[4] She justified her refusal as a matter of "conscience"! "It can be no less than a scandal to religion that a General Court of Christians should be obliged to act and engage upon the faith of six delegates against their conscience," etc. Records, Vol. IV., Pt. I., p. 143, May 18, 1653.